2012
CUMULATIVE POCKET SUPPLEMENT

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

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TITLES 44-48

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ISBN 978-0-672-83888-0 (Set)
ISBN 978-0-327-04329-4

(Pub.42205)

PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2012 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012

TITLE 44

LABOR

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21. Manufactured Home Dealer and Installer Licensing, §§ 44-2101 — 44-2102, 44-2103 — 44-2108.
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CHAPTER 13

CHILD LABOR LAW

SECTION.
44-1301. Restrictions on employment of children under fourteen.

44-1301. Restrictions on employment of children under fourteen. — No child under fourteen (14) years of age shall be employed, permitted or suffered to work in or in connection with any mine, factory, workshop, mercantile establishment, store, telegraph or telephone office, laundry, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages. It shall be unlawful for any person, firm or corporation to employ any child under fourteen (14) years of age in any business or service whatever during the hours in which the public schools of the district in which the child resides are in session, or before the hour of six o'clock in the morning, or after the hour of nine o'clock in the evening: provided, that any child over the age of twelve (12) years may be employed at any of the occupations mentioned in this chapter during the regular vacations of two (2) weeks or more of the public schools of the district in which such child resides. Provided however, a student may be employed by the public schools of the district for a maximum of ten (10) hours per week

provided such employment is voluntary and with the consent of the student's legal guardian.

History.
1907, p. 248, § 1; am. R.C., § 1466; am. 1911, ch. 159, § 166, p. 483; am. C.L. 38:280; C.S., § 1024; I.C.A., § 43-801; am. 2011, ch. 199, § 1, p. 581.

Compiler's Notes. The 2011 amendment, by ch. 199, added the last sentence.

CHAPTER 15

MINIMUM WAGE LAW

SECTION.
44-1502. Minimum wages.

44-1502. Minimum wages. — (1) Except as hereinafter otherwise provided, no employer shall pay to any of his employees any wages computed at a rate of less than four dollars and seventy-five cents ($4.75) commencing April 1, 1997, and five dollars and fifteen cents ($5.15) commencing September 1, 1997, per hour for employment. The amount of the minimum wage shall conform to, and track with, the federal minimum wage.

(2) In determining the wage of a tipped employee, the amount of direct wages paid by an employer to the employee shall be deemed to be increased on account of tips actually received by the employee; provided however, the direct wages paid to the employee by the employer shall not be in an amount less than three dollars and thirty-five cents ($3.35) an hour. If the tips actually received by the employee combined with the direct wages paid by the employer do not at least equal the minimum wage, the employer must make up the difference. In the event a dispute arises between the employee and the employer with respect to the amount of tips actually received by the employee, it shall be the employer's burden to demonstrate the amount of tips actually received by the employee. Any portion of tips paid to an employee, which is shared with other employees under a tip pooling or similar arrangement, shall not be deemed, for the purpose of this section, to be tips actually received by the employee.

(3) In lieu of the rate prescribed by subsection (1) of this section, an employer may pay an employee who has not attained twenty (20) years of age a wage which is not less than four dollars and twenty-five cents ($4.25) an hour during the first ninety (90) consecutive calendar days after such employee is initially employed. No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

History.
1955, ch. 154, § 2, p. 301; am. 1963, ch. 9, § 1, p. 20; am. 1967, ch. 411, § 1, p. 1222; am. 1971, ch. 123, § 1, p. 422; am. 1976, ch. 38, § 1, p. 80; am. 1990, ch. 132, § 1, p. 305; am. 1990, ch. 212, § 1, p. 479; am. 1997, ch. 309, § 1, p. 916; am. 1998, ch. 107, § 1, p. 366; am. 2007, ch. 357, § 1, p. 1056.

Compiler's Notes. The 2007 amendment, by ch. 357, added the last sentence in subsection (1); and in subsection (2), in the first sentence, substituted "the amount of direct

wages paid by an employer to the employee" for "the amount paid such employee by an employer" and the language beginning "provided however" for "but not by an amount in excess of thirty-three percent (33%) of the applicable minimum wage, beginning April 1, 1997, and until August 31, 1997, and thirty-five percent (35%) on and after September 1, 1997, as set forth in subsection (1) of this section," and added the second sentence.

S.L. 2007, chapter 357 became law without the signature of the governor, effective April 11, 2007.

Collateral References. Tips as wages for purposes of state wage laws. 61 A.L.R. 6th 61.

44-1503. Definitions.

Collateral References. Tips as wages for purposes of state wage laws. 61 A.L.R. 6th 61.

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SECTION.
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44-2001. Declaration of public policy.

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44-2004. Voluntary payments protected.

Constitutionality.

First Amendment does not confer an affirmative right to use government payrolls to collect funds for union political activities, or prevent a state from deciding its local governments should not provide payroll deductions for such activities. Ysursa v. Pocatello Educ. Ass'n, 555 U.S. 353, 129 S. Ct. 1093, 172 L. Ed. 2d 770 (2009).

44-2007. Penalties. — Any person who directly or indirectly violates any provision of this chapter, excluding the provisions of sections 44-2012 and 44-2013, Idaho Code, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding one thousand dollars ($1,000) or imprisonment for a period of not more than ninety (90) days, or both such fine and imprisonment.

History.
I.C., § 44-2007, as added by 1985, ch. 2, § 1, p. 4; am. 2012, ch. 312, § 1, p. 860.
Compiler's Notes. The 2012 amendment, by ch. 312, inserted "excluding the provisions of sections 44-2012 and 44-2013, Idaho Code" near the beginning of the section.

44-2008. Civil remedies. — Any employee injured as a result of any violation or threatened violation of the provisions of this chapter, excluding the provisions of sections 44-2012 and 44-2013, Idaho Code, shall be entitled to injunctive relief against any and all violators or persons threatening violations and may in addition thereto recover any and all damages, including costs and reasonable attorney's fees, of any character resulting from such violation or threatened violation. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this chapter.

History.
I.C., § 44-2008, as added by 1985, ch. 2, § 1, p. 4; am. 2012, ch. 312, § 2, p. 860.
Compiler's Notes. The 2012 amendment, by ch. 312, inserted "excluding the provisions of sections 44-2012 and 44-2013, Idaho Code" in the first sentence.

44-2012. Prohibited activity. — (1) The provisions of this act shall be known as the "Fairness in Contracting Act." The intent of this act is to promote fairness in bidding and contracting.

(2) No contractor or subcontractor may directly or indirectly receive a wage subsidy, bid supplement or rebate on behalf of its employees, or provide the same to its employees, the source of which is wages, dues or assessments collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments.

(3) No labor organization may directly or indirectly pay a wage subsidy or wage rebate to its members in order to directly or indirectly subsidize a contractor or subcontractor, the source of which is wages, dues or assessments collected by or on behalf of its members, whether or not labeled as dues or assessments.

(4) It is illegal to use any fund financed by wages collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments, to subsidize a contractor or subcontractor doing business in the state of Idaho.

(5) Any contractor, subcontractor or labor organization that violates the provisions of this section shall be guilty of a misdemeanor and fined an amount not to exceed ten thousand dollars ($10,000) for a first offense, twenty-five thousand dollars ($25,000) for a second offense, and one hundred thousand dollars ($100,000) for each and every additional offense.

(6) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement in violation of the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

History.
I.C., § 44-2012, as added by 2011, ch. 32, § 1, p. 75.

Compiler's Notes. The term "this act" in subsection (1) refers to S.L. 2011, ch. 32, which is codified as §§ 44-2012 and 44-2014.

44-2013. Public works — Wages. — Notwithstanding any other provision found in chapter 10, title 44, Idaho Code, and chapter 57, title 67, Idaho Code, the following shall apply:

(1) This act shall be known as the "Open Access to Work Act."

(2) For purposes of this section, the following terms have the following meanings:

(a) "Political subdivision" means the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof.

(b) "Public works" shall have the same meaning as that provided for "public works construction" in section 54-1901, Idaho Code.

(3)(a) Except as provided in subsection (3)(b) of this section or as required by federal or state law, the state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works pay its employees:

(i) A predetermined amount of wages or wage rate; or

(ii) A type, amount or rate of employee benefits.

(b) Subsection (3)(a) of this section shall not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds.

(4) The state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works executes or otherwise becomes a party to any project labor agreement, collective bargaining agreement, prehire agreement or any other agreement with employees, their representatives or any labor organization as a condition of bidding, negotiating, being awarded or performing work on a public works project.

(5) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement that violated the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

(6) The provisions of this section apply to any contract executed after July 1, 2011.

History.

I.C., § 44-2013, as added by 2011, ch. 31, § 2, p. 74.

Compiler's Notes. The term "this act" in subsection (1) refers to S.L. 2011, ch. 31, which appears codified as this section and in notes following this section.

S.L. 2011, ch. 32, § 2 redesignated former § 44-2012 as § 44-2013, effective July 1, 2011. However, S.L. 2011, ch. 31, § 2 enacted a new section designated as § 44-2013, also effective July 1, 2011. The code section affected by S.L. 2011, ch. 32 has been redesignated, through the use of brackets, as § 44-2014.

Section 1 of S.L. 2011, ch. 31 provided: "Legislative Intent. It is the intent of the Legislature to maintain and strengthen law to protect open access to work for all Idahoans."

Section 3 of S.L. 2011, ch. 31 provided "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

[44-2014] 44-2013. Severability. — The provisions of this chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, such declaration shall not affect the remaining provisions of this chapter.

History.

I.C., § 44-2011, as added by 1985, ch. 2, § 1, p. 4; am. and redesig. 1995, ch. 178, § 1, p. 662; am. and redesig. 2011, ch. 32, § 2, p. 75.

Compiler's Notes. The 2011 amendment, by ch. 32, redesignated this section from § 44-2012.

S.L. 2011, ch. 32, § 2 redesignated former § 44-2012 as § 44-2013, effective July 1, 2011. However, S.L. 2011, ch. 31, § 2 enacted a new section designated as § 44-2013, also effective July 1, 2011. The code section affected by S.L. 2011, ch. 32 has been redesignated, through the use of brackets, as § 44-2014.

CHAPTER 21

MANUFACTURED HOME DEALER AND INSTALLER LICENSING

SECTION.
44-2101. Purpose — License required — Reinstatement.
44-2101A. Definitions.
44-2102. Administration — Powers and duties.
44-2103. Fees — Deposit of fees.
44-2104. Manufactured housing board.
44-2105. Discipline — Hearing — Judicial review — Reapplication.
44-2106. Violations.
44-2107. Penalty provisions.
44-2108. Retailer and resale broker — Additional licensure requirements.

44-2101. Purpose — License required — Reinstatement. — (1) The legislature finds that the regulation and control of those persons engaged in the business of manufacturing, selling, installing or servicing of manufactured and mobile homes is necessary to protect the health and safety of the citizens of Idaho. To that end, it shall be unlawful for any person to engage in business as a manufacturer, retailer, resale broker, installer, service company, salesman or responsible managing employee without being duly licensed as provided in this chapter.

(2) On and after July 1, 2007, all applicants for retailer or resale broker original licensure will be required to submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant for original licensure must submit a full set of the applicant's fingerprints and any

relevant fees directly to the Idaho state police and the federal bureau of investigation identification division for this purpose.

(3) If the licensee fails to submit a completed application for renewal or to pay the renewal fee on or before the expiration date, the administrator may accept a later application for reinstatement subject to such conditions as the board may require by rule including, but not limited to, the assessment of a late fee; provided that between the license expiration date and the date of reinstatement of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful for such licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions in section 44-2101A, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not reinstated within six (6) months of the expiration date shall be automatically terminated by the administrator and may not be reinstated.

History.
I.C., § 44-2101, as added by 1993, ch. 372, § 1, p. 1339; am. 2004, ch. 313, § 2, p. 878; am. 2007, ch. 112, § 1, p. 321.

Compiler's Notes. The 2007 amendment, by ch. 112, added "reinstatement" in the section catchline; added the subsection (1) designation, and therein inserted "and mobile" in the first sentence, and in the second sentence, deleted "of manufactured homes, a manufactured home dealer" following "business as a manufacturer," and substituted "retailer, resale broker, installer, service company, salesman or responsible managing employee" for "manufactured home installer, manufactured home service company or a manufactured home salesman"; and added subsections (2) and (3).

44-2101A. Definitions. — As used in this chapter:

(1) "Administrator" means the administrator of the division of building safety of the state of Idaho.

(2) "Board" means the manufactured housing board established in section 44-2104, Idaho Code.

(3) "Engaged in the business" means the individual or entity buys, sells, brokers, trades, or offers for resale a manufactured or mobile home.

(4) "Installer" means a person who owns a business that installs or services a manufactured home or mobile home at the site where it is to be used for occupancy.

(5) "Manufactured home" or "manufactured house" means a structure as defined in section 39-4105, Idaho Code.

(6) "Manufacturer" means any person engaged in the business of manufacturing manufactured homes that are offered for sale, lease or exchange in the state of Idaho.

(7) "Mobile home" means a structure as defined in section 39-4105, Idaho Code.

(8) "Person" means a natural person, corporation, partnership, trust, society, club, association or other organization.

(9) "Place of business" refers to any physical location at which the business is lawfully conducted.

(10) "Resale broker" means any person engaged in the business of selling broker-owned, used, third-party owned, or other resale of manufactured or mobile homes.

(11) "Responsible managing employee" or "RME" means the person des-

ignated by the retailer, installer, manufacturer, service company or resale broker to supervise other employees, either personally or through others.

(12) "Retailer" means any person engaged in the business of selling or exchanging new, used, resale or brokered manufactured or mobile homes.

(13) "Salesman" means any person employed by a retailer or resale broker for a salary, commission or compensation of any kind to sell, list, purchase or exchange or to negotiate for the sale, listing, purchase or exchange of new, used, brokered or third-party owned units, except as otherwise provided in this chapter.

(14) "Service company" means any person other than an installer who provides service, repair or tear down of manufactured or mobile homes.

History.

I.C., § 44-2101A, as added by 2007, ch. 112, § 3, p. 321; am. 2008, ch. 380, § 1, p. 1050.

Compiler's Notes. Former § 44-2101A, which comprised I.C., § 44-2101, as added by 1988, ch. 264, § 1, p. 519; am. 1989, ch. 21, § 1, p. 24; am. and redesig. 1993, ch. 372, § 2, p. 1339; am. 1996, ch. 421, § 28, p. 1406; am. 1997, ch. 228, § 1, p. 666; am. 2002, ch. 345, § 33, p. 963; am. 2004, ch. 313, § 3, p. 878, was repealed by S.L. 2007, ch. 112, § 2.

The 2008 amendment, by ch. 380, inserted "installer, manufacturer, service company" in subsection (11).

44-2102. Administration — Powers and duties. — The administrator is charged with the administration of the provisions of this chapter and shall:

(1) In accordance with the provisions of chapter 52, title 67, Idaho Code, promulgate, adopt, amend, and repeal rules for the establishment of a mandatory statewide manufactured home setup code. The administrator shall also define and prohibit any practice which is found to be deceptive.

(2) Prescribe the form and content of a new manufactured home buyer's information and disclosure form. Unless otherwise provided by the administrator, the form shall be presented by the retailer to each purchaser of a new manufactured home, and shall be executed by the retailer and purchaser at the time the initial purchase order is signed for the sale of a new manufactured home.

(3)(a) A used unit which has been determined to be or declared by the owner to be real property under the provisions of section 63-304, Idaho Code, may be offered for sale, listed, bought for resale, negotiated for, either directly or indirectly, by a licensed real estate broker or a real estate salesman representing a licensed real estate broker, but not a retailer, resale broker or salesman.

(b) A used unit which has been determined to be and is carried on the tax rolls as personal property may be offered for sale, listed, bought for resale, negotiated for, either directly or indirectly, by a licensed real estate broker or a real estate salesman, pursuant to chapter 20, title 54, Idaho Code, or by a licensed retailer, resale broker or salesman, but with respect to a licensed retailer, resale broker or salesman only to the extent such sale does not involve the purchase or sale of an interest in real estate.

(c) A licensed real estate broker or real estate salesman representing a licensed real estate broker pursuant to chapter 20, title 54, Idaho Code, may participate in new manufactured home sales that include real estate if the real estate broker or salesman has a valid, written agreement with

a licensed retailer to represent the interests of the retailer in this type of transaction.

(4) Promulgate rules establishing a program for the timely resolution of disputes between manufacturers, retailers, resale brokers and installers of manufactured homes. The rules shall be consistent with the United States department of housing and urban development's procedural and enforcement authority in 42 U.S.C. 5422(c)(12), and shall include identifying the respective responsibilities of manufacturers, retailers, resale brokers and installers; providing for the issuance of appropriate orders for the correction or repair of defects in manufactured homes that are reported during the one (1) year period following the date of installation; and may include an appropriate schedule of fees.

History.

I.C., § 44-2102, as added by 1988, ch. 264, § 1, p. 519; am. 1990, ch. 165, § 1, p. 362; am. 1996, ch. 322, § 43, p. 1029; am. 1996, ch. 421, § 29, p. 1406; am. 1997, ch. 107, § 1, p. 251; am. 1999, ch. 171, § 1, p. 461; am. 2000, ch. 439, § 1, p. 1398; am. 2004, ch. 243, § 1, p. 708; am. 2004, ch. 313, § 4, p. 878; am. 2007, ch. 112, § 4, p. 321.

Compiler's Notes. This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 243, deleted subsection (4).

The 2004 amendment, by ch. 313, deleted "broker" following "manufactured home dealer" two times in subsection (3)(b).

The 2007 amendment, by ch. 112, in subsections (2) and (3)(c), twice substituted "retailer" for references to "manufactured home dealer"; in subsections (3)(a) and (3)(c), inserted "real estate"; in subsections (3)(a) and (3)(b), substituted "retailer, resale broker" for "manufactured home dealer," and deleted "manufactured home" preceding "salesman"; and in subsection (4), twice inserted "resale brokers" following "retailers."

44-2103. Fees — Deposit of fees. — (1) Fees for licensing of retailers, resale brokers, installers, manufacturers, salesmen, RMEs and service companies shall not exceed:

(a) Retailer or resale broker license $500.00
(b) Manufacturer license $500.00
(c) Service company or installer license $300.00
(d) Salesman license ..... $ 50.00
(e) RME license ..... $ 50.00

(2) All license fees collected by the division of building safety under the provisions of this chapter shall be paid into the manufactured housing account, which is hereby created in the dedicated fund. The expenses incurred in administering and enforcing the provisions of this chapter shall be paid from the account.

(3) The following performance bonding requirements shall be met before the issuance of these licenses:

(a) Manufacturer ..... $20,000 bond
(b) Retailer ..... $40,000 bond
(c) Resale broker ..... $30,000 bond
(d) Service company or installer ..... $ 5,000 bond

(4) The administrator is authorized to provide by rule, in accordance with the provisions of section 44-2102, Idaho Code, for the acceptance of a deposit of cash or securities in lieu of a bond in satisfaction of the bonding requirements of this section.

(5) Fees and bond requirements of this section shall be the exclusive fee

and bond requirements for retailers, resale brokers, installers, manufacturers, salesmen and service companies governed by the provisions of this chapter, and shall supersede any program of any political subdivision of the state which sets fee or bond requirements for the same services.

(6) A retailer or resale broker must obtain a separate service company or installer license, pay the license fee set forth in subsection (1)(c) of this section and meet the bonding requirements of subsection (3)(d) of this section in order to provide the services covered by a service company or installer license.

History.

I.C., § 44-2103, as added by 1988, ch. 264, § 1, p. 519; am. 1993, ch. 372, § 3, p. 1339; am. 1995, ch. 202, § 1, p. 694; am. 1996, ch. 171, § 1, p. 554; am. 1996, ch. 421, § 30, p. 1406; am. 2004, ch. 313, § 5, p. 878; am. 2007, ch. 112, § 5, p. 321.

Compiler's Notes. Section 6 of S.L. 2004, ch. 313 is compiled as § 44-2103.

The 2007 amendment, by ch. 112, in subsection (1), twice substituted references to "retailers, resale brokers" or similar language for references to "manufactured home dealers" and "RMEs" for "responsible managing employees," and deleted "Manufactured home" from the beginning of subsections (1)(c) and (1)(d); in subsection (3)(b), substituted "Retailer" for "Manufactured home dealer," and doubled the bond amount; added subsection (3)(c), redesignated former subsection (3)(c) as (3)(d), and therein deleted "Manufactured home" from the beginning; in subsection (4), substituted "deposit of cash or securities" for "money deposit"; in subsection (5), substituted "retailers, resale brokers" for "dealers"; and added subsection (6).

44-2104. Manufactured housing board. — (1) A manufactured housing board is established in the division of building safety to advise the administrator in the administration and enforcement of the provisions of this chapter. The board shall consist of five (5) members, appointed by the governor, four (4) of whom shall be licensed retailers and one (1) of whom shall be a consumer who lives in a manufactured home. Board members shall serve for a term of three (3) years. Not more than three (3) members shall at any time belong to the same political party. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term. The members of the board shall be compensated as provided in section 59-509(n), Idaho Code, for each day spent in attendance at meetings of the board. A majority of members shall constitute a quorum, and a quorum at any meeting called by the administrator shall have full and complete power to act upon and resolve in the name of the board any matter, thing or question referred to it by the administrator, or which by reason of any provision of this chapter, it has the power to determine.

(2) The board shall, on the first day of each January or as soon thereafter as practicable, elect a chairman, vice chairman and secretary from among its members, and these officers shall hold office until their successors are elected. As soon as the board has elected its officers, the secretary shall certify the results of the election to the administrator. The chairman shall preside at all meetings of the board and the secretary shall make a record of the proceedings which shall be preserved in the offices of the division of building safety. If the chairman is absent from any meeting of the board, his duties shall be discharged by the vice chairman. All members of the board present at a meeting shall be entitled to vote on any question, matter, or thing which properly comes before it.

(3) The board shall have the authority to promulgate rules in accordance with chapter 52, title 67, Idaho Code, to implement the provisions of this chapter.

History.
I.C., § 44-2104, as added by 1988, ch. 264, § 1, p. 519; am. 1996, ch. 334, § 1, p. 1131; am. 1996, ch. 421, § 31, p. 1406; am. 2000, ch. 439, § 2, p. 1398; am. 2001, ch. 151, § 2, p. 546; am. 2007, ch. 112, § 6, p. 321.

Compiler's Notes. The 2007 amendment, by ch. 112, in the section catchline and in the first sentence of subsection (1), substituted "manufactured housing board" for "manufactured home advisory board"; in subsection (1), substituted "shall be licensed retailers" for "shall be from licensed manufactured home dealers" in the second sentence, and substituted the present third sentence for the former third, fourth, and fifth sentences, which read: "The board shall serve the following terms commencing January 1, 1989: two (2) members shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years, and one (1) member shall be appointed for a term of three (3) years. The consumer member shall be a member appointed to a term beginning on January 1, 1996, or as soon thereafter as there is a vacancy on the board. Thereafter board members shall be appointed for a term of three (3) years."

44-2105. Discipline — Hearing — Judicial review — Reapplication. — (1) The administrator may refuse to issue, renew, or reinstate or may suspend, revoke or take other disciplinary action against any license, if the license was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has willfully violated any provision of this chapter or the rules adopted thereunder, or has been convicted of conduct constituting a felony or any theft or fraud offense, or has ever had a business license revoked in this or any other state or territory of the United States.

(2) The administrator shall have the power to appoint, by an order in writing, any competent person to take testimony at any disciplinary hearing. The administrator, and any hearing officer appointed by the administrator, shall have the power to administer oaths, issue subpoenas and compel the attendance of witnesses and the production of documents and records.

(3) Before any license shall be suspended, revoked or otherwise disciplined, the holder thereof shall be served with written notice enumerating the charges against him, and shall be afforded an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code. The notice shall specify the time and place for hearing, which time shall not be less than five (5) days after the service thereof.

(4) Any party aggrieved by an order of the administrator disciplining a license shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

(5) Any person whose license has been revoked may not apply for a new license until the expiration of one (1) year from the date of such revocation.

History.
I.C., § 44-2105, as added by 1993, ch. 372, § 5, p. 1339; am. 1996, ch. 421, § 32, p. 1406; am. 2007, ch. 112, § 7, p. 321.

Compiler's Notes. The 2007 amendment, by ch. 112, in the section catchline and in subsection (4), substituted "discipline" for "suspension or revoking," or similar language; in subsection (1), inserted "refuse to issue, renew, or reinstate or may" and "or take other disciplinary action against," and added the language beginning "or has been convicted of conduct constituting a felony"; in the first sentence in subsection (2), substituted "at any disciplinary hearing" for "at a hearing conducted for the purposes of determining

whether a license should be suspended or revoked"; and in subsection (3), inserted "or otherwise disciplined."

44-2106. Violations. — (1) It shall be unlawful to engage in business as a manufacturer, retailer, resale broker, installer, salesman, service company or RME without being duly licensed by the division of building safety pursuant to this chapter, except that an individual may buy, sell, broker, trade or offer for resale up to two (2) manufactured or mobile homes, or a combination thereof, in any one (1) calendar year without being licensed under this chapter if all of the units have been properly titled in the name of that individual.

(2) It shall be unlawful for a manufacturer, retailer, resale broker, installer, salesman, service company or RME to:

(a) Intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products or services sold or provided by a manufacturer, retailer, resale broker, installer, salesman, service company or RME;

(b) Violate any of the provisions of this chapter or any rule adopted by the division of building safety pursuant to this chapter;

(c) Knowingly purchase, sell or otherwise acquire or dispose of a stolen manufactured or mobile home;

(d) With respect only to a retailer or resale broker, to engage in the business for which such retailer or resale broker is licensed without at all times maintaining a principal place of business located within the state.

History.

I.C., § 44-2106, as added by 1993, ch. 372, § 6, p. 1339; am. 1996, ch. 421, § 33, p. 1406; am. 2004, ch. 313, § 6, p. 878; am. 2007, ch. 112, § 8, p. 321.

Compiler's Notes. Sections 5 and 7 of S.L. 2004, ch. 313 are compiled as §§ 44-2103 and 67-2601, respectively.

The 2007 amendment, by ch. 112, deleted the term "manufactured home" from the section; substituted "retailer" for "dealer" and included resale brokers in coverage of the section; and added the exception in subsection (1).

44-2107. Penalty provisions. — (1) Whoever shall violate any of the provisions of this chapter, or any laws or rules adopted pursuant to this chapter, or who shall refuse to perform any duty lawfully enjoined upon him by the administrator within the prescribed time, or who shall fail, neglect, or refuse to obey any lawful order given or made by the administrator, shall be guilty of a misdemeanor and shall be subject to the civil penalties established by administrative rule but not to exceed one thousand dollars ($1,000) in accordance with the following:

(a) Each day of such violation shall constitute a separate offense. A violation will be considered a second or additional offense only if it occurs within one (1) year from the first violation.

(b) The same penalties shall apply, upon conviction, to any member of a copartnership, or to any construction, managing or directing officer of any corporation, limited liability company or limited liability partnership or other such organization consenting to, participating in, or aiding or abetting any such violation of this chapter.

(2) In addition to any other penalties specified in this section, whenever any person violates the provisions of this chapter by acting as a retailer, resale broker, installer, service company or RME, without a license, the administrator may maintain an action in the name of the state of Idaho to enjoin the person from any further violations in accordance with the following:

(a) Such action may be brought either in the county in which the acts are claimed to have been or are being committed, in the county where the defendant resides, or in Ada county.

(b) Upon the filing of a verified complaint in the district court, the court, if satisfied that the acts complained of have been or probably are being or may be committed, may issue a temporary restraining order and/or preliminary injunction, without bond, enjoining the defendant from the commission of any such act or acts constituting the violation.

(c) A copy of the complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other similar civil actions. If the commission of the act or acts is established, the court shall enter a decree permanently enjoining the defendant from committing such act or acts. If an injunction issued under this section is violated, the court, or the judge thereof at chambers, may summarily try and punish the offender for contempt of court.

History.
I.C., § 44-2106, as added by 1988, ch. 264, § 1, p. 519; am. and redesig. 1993, ch. 372, § 7, p. 1339; am. 2007, ch. 112, § 9, p. 321.

Compiler's Notes. The 2007 amendment, by ch. 112, rewrote the section which formerly read: "Whoever shall violate any of the provisions of this chapter, or any laws or rules adopted pursuant to this chapter, shall be guilty of a misdemeanor."

44-2108. Retailer and resale broker — Additional licensure requirements. — (1) Each business office or retail sales location shall be owned or leased by the retailer or resale broker and shall comply with all local building codes, zoning, and other applicable land use regulatory ordinances, and:

(a) If the location is on leased property, the retailer or resale broker must provide written confirmation of the term and existence of the lease, signed by the lessor; and

(b) An exterior sign that identifies the retailer or resale broker by the name shown on the license must be prominently affixed to the location or the office building and be clearly visible and easily readable from the nearest major avenue of traffic; and

(c) The retailer or resale broker must prominently display his license, or a true and correct copy of that license, in each location; and

(d) The licensee must post, in a clearly visible and readily accessible location, written information concerning regular hours of business and emergency contact information.

(2) Regardless of the number of locations at which a retailer or resale broker engages in business, he must maintain a principal place of business that complies with the requirements set forth in subsection (1)(a) of this section, and at which the records of the business are maintained on a permanent basis.

(3) The retailer or resale broker must promptly notify the division of building safety, in writing, of any change in ownership, business name, location of business, mailing address or telephone numbers.

(4) For each new product sold, the retailer must provide proof, satisfactory to the board, of the retailer's current authority to sell that manufacturer's products.

(5) Failure to adhere to the requirements of this section, or any other requirement pertaining to licensure as set forth in law or rule, shall constitute grounds for the imposition of discipline up to and including revocation of licensure.

History.
I.C., § 44-2108, as added by 2007, ch. 112, § 10, p. 321.

CHAPTER 22

MANUFACTURED HOME INSTALLATION STANDARD

SECTION.
44-2201. Mobile and manufactured homes installation.
SECTION.
44-2202. Installation permits and inspections required.

44-2201. Mobile and manufactured homes installation. — (1) All new manufactured homes must be installed in accordance with the manufacturer's approved installation instructions. All used mobile and manufactured homes shall be installed in accordance with the Idaho manufactured home installation standard, as provided by rule pursuant to this chapter. All mobile and manufactured homes must be installed in accordance with all other applicable state laws or rules pertaining to utility connection requirements.

(2) The administrator of the division of building safety may promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, specifying standardized installation instructions for mobile and manufactured homes. Upon the effective date of such rules, the rules shall prevail over any conflicting provisions in this chapter.

History.
I.C., § 44-2201, as added by 1988, ch. 264, § 2, p. 519; am. 1993, ch. 372, § 8, p. 1339; am. 1998, ch. 237, § 1, p. 794; am. 2001, ch. 96, § 2, p. 243; am. 2012, ch. 50, § 1, p. 146.

Compiler's Notes. The 2012 amendment, by ch. 50, in subsection (1) substituted "new manufactured homes" for "mobile/manufactured homes" near the beginning of the first sentence and added "manufacturer's approved installation instructions" at the end and inserted "All used mobile and manufactured homes shall be installed in accordance with the" at the beginning of the second sentence; and substituted "mobile and manufactured homes" for "mobile/manufactured homes" in the section heading and twice in the text.

44-2202. Installation permits and inspections required. — (1) The owner or the installer of a mobile or manufactured home must obtain an installation tag and permit as applicable before installing a mobile or manufactured home that will be used as a residence on a building site or in a park. The installer's license must be in effect at the time of the application for the installation permit.

(2) Installation tags shall be obtained from the division of building safety and are required for each installation of a new manufactured home. The fee for the installation tag shall be prescribed in administrative rules promulgated by the administrator of the division of building safety.

(3) Installation permits shall be issued by the division of building safety or a city or county that has by ordinance adopted a building code and whose installation inspection programs have been approved by the division. All installations shall be inspected by the authority having jurisdiction for compliance.

(4) Permit fees shall be prescribed in administrative rules promulgated by the administrator of the division of building safety or as established by the city or county having jurisdiction whose installation inspection program has been approved by the division, as applicable.

(5) Immediately upon completion of the installation of a mobile or manufactured home, a licensed installer or the responsible managing employee of the licensed installer shall perform an inspection of the completed installation to ensure compliance with the applicable installation standard. Such inspection shall be recorded on an inspection record document approved by the division and a copy shall be provided to the homeowner upon completion of the inspection.

History.

I.C., § 44-2202, as added by 1988, ch. 264, § 2, p. 519; am. 1993, ch. 372, § 9, p. 1339; am. 1997, ch. 228, § 2, p. 666; am. 2001, ch. 96, § 3, p. 243; am. 2012, ch. 50, § 2, p. 146.

Compiler's Notes. The 2012 amendment, by ch. 50, in subsection (1), twice substituted "mobile or manufactured home" for "mobile/manufactured home, substituted "tag and permit as applicable" for "permit as required by city or county ordinance; rewrote subsection (2), which formerly read: "Cities and counties, which have by ordinance adopted a building code, shall establish a permit process for the installation of all mobile/manufactured homes within their respective jurisdictions and shall provide for inspection of all work in accordance with the Idaho manufactured home installation standard. Fees for installation permits and inspections shall be as established by the city or county having jurisdiction"; added subsections (3) and (4); redesignated former subsection (3) as subsection (5); and substituted "applicable installation" for "Idaho manufactured home installation" near the end of the first sentence in subsection (5).

Cross Reference. Division of building safety, § 67-2601A.

CHAPTER 24

IDAHO PROFESSIONAL EMPLOYER

44-2403. Definitions.

Construction with Other Law.

In determining whether an employment services provider to small businesses transacted insurance under § 41-112, the Idaho supreme court, reviewing a decision of the director of the Idaho department of insurance de novo, was not required to determine whether the provider was a professional employer under Idaho law or whether it sold insurance pursuant to paragraph (5)(d) of this section. Rather, the provider transacted insurance, and, thus, was required to have a certificate of authority to do so; the provider's because its agreements with its clients, wherein it received compensation from its clients and from the clients' employees and, in exchange, it was required to pay benefits, constituted contracts of insurance. Emplrs Res. Mgmt. Co. v. Dep't of Ins., 143 Idaho 179, 141 P.3d 1048 (2006), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

CHAPTER 26

VOLUNTARY CONTRIBUTIONS ACT

44-2602. Definitions.

Collateral References. Constitutional Validity of State or Local Regulation of Contributions by or to Political Action Committees. 24 A.L.R.6th 179.

CHAPTER 27

AGREEMENTS AND COVENANTS PROTECTING LEGITIMATE BUSINESS INTERESTS

SECTION.
44-2701. Agreements and covenants protecting legitimate business interests.
44-2702. Definitions.
44-2703. Construction and enforcement.
44-2704. Restriction of direct competition — Rebuttable presumptions.

44-2701. Agreements and covenants protecting legitimate business interests. — A key employee or key independent contractor may enter into a written agreement or covenant that protects the employer's legitimate business interests and prohibits the key employee or key independent contractor from engaging in employment or a line of business that is in direct competition with the employer's business after termination of employment, and the same shall be enforceable, if the agreement or covenant is reasonable as to its duration, geographical area, type of employment or line of business, and does not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interests.

History.
I.C., § 44-2701, as added by 2008, ch. 295, § 1, p. 824.

44-2702. Definitions. — For purposes of this section [chapter], the following terms shall have the following meanings:

(1) "Key employees" and "key independent contractors" shall include those employees or independent contractors who, by reason of the employer's investment of time, money, trust, exposure to the public, or exposure to technologies, intellectual property, business plans, business processes and methods of operation, customers, vendors or other business relationships during the course of employment, have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer, and as a result, have the ability to harm or threaten an employer's legitimate business interests.

(2) "Legitimate business interests" shall include, but not be limited to, an employer's goodwill, technologies, intellectual property, business plans, business processes and methods of operation, customers, customer lists, customer contacts and referral sources, vendors and vendor contacts, financial and marketing information, and trade secrets as that term is defined by chapter 8, title 48, Idaho Code.

History.
I.C., § 44-2702, as added by 2008, ch. 295, § 1, p. 824.

Compiler's Notes. The bracketed insertion in the introductory paragraph was made to clarify the scope of this section.

44-2703. Construction and enforcement. — To the extent any such agreement or covenant is found to be unreasonable in any respect, a court shall limit or modify the agreement or covenant as it shall determine necessary to reflect the intent of the parties and render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement or covenant as limited or modified.

History.
I.C., § 44-2703, as added by 2008, ch. 295, § 1, p. 824.

44-2704. Restriction of direct competition — Rebuttable presumptions. — (1) Under no circumstances shall a provision of such agreement or covenant, as set forth herein, establish a postemployment restriction of direct competition that exceeds a period of eighteen (18) months from the time of the key employee's or key independent contractor's termination unless consideration, in addition to employment or continued employment, is given to a key employee or key independent contractor. Nothing in this chapter shall be construed to limit a party's ability to otherwise protect trade secrets or other information deemed proprietary or confidential.

(2) It shall be a rebuttable presumption that an agreement or covenant with a postemployment term of eighteen (18) months or less is reasonable as to duration.

(3) It shall be a rebuttable presumption that an agreement or covenant is reasonable as to geographic area if it is restricted to the geographic areas in which the key employee or key independent contractor provided services or had a significant presence or influence.

(4) It shall be a rebuttable presumption that an agreement or covenant is reasonable as to type of employment or line of business if it is limited to the type of employment or line of business conducted by the key employee or key independent contractor while working for the employer.

(5) It shall be a rebuttable presumption that an employee or independent contractor who is among the highest paid five percent (5%) of the employer's employees or independent contractors is a "key employee" or a "key independent contractor." To rebut such presumption, an employee or independent contractor must show that it has no ability to adversely affect the employer's legitimate business interests.

History.
I.C., § 44-2704, as added by 2008, ch. 295, § 1, p. 824.

Unenforceable Covenant.

In an action for tortious interference with a noncompete agreement, the new employer was entitled to summary judgment because the former employer's noncompete agreement was unenforceable under Idaho law; the covenant was not restricted to clients with whom the employee had contact, prohibited "work" was not defined, and the geographic area was not restricted for purposes of this section. AMX Int'l, Inc. v. Battelle Energy Alliance, Llc, 744 F. Supp. 2d 1087 (D. Idaho 2010).

TITLE 45

LIENS, MORTGAGES AND PLEDGES

CHAPTER.
5. Liens of Mechanics and Materialmen, § 45-525.
8. Miscellaneous Liens, §§ 45-805, 45-810.
13. General Provisions Relating to Enforcement of Liens and Mortgages, § 45-1302.
15. Trust Deeds, §§ 45-1502, 45-1504 — 45-1506, 45-1506C, 45-1510.
16. Consumer Foreclosure Protection Act, §§ 45-1601 — 45-1605.
17. Nonconsensual Common Law Liens, §§ 45-1704, 45-1705.
19. State Liens, § 45-1910.

CHAPTER 1

LIENS IN GENERAL

45-101. Liens defined.

Cited in: Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008).

45-105. Satisfaction of prior lien.

Prior Lien.

Payments to satisfy a subsequent mortgage may not be added to the amount owing on a prior lien, as those earlier expenditures were not made on a prior lien, as required by this section. Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009).

45-109. Lien transfers no title.

Cited in: Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008).

45-112. Priority of purchase money mortgage.

Analysis

Purchase money mortgages.
Mortgage priority.

Purchase Money Mortgages.

Both parties had purchase money mortgages where each party received a mortgage for a portion of the price of the property and received the mortgage at the time of conveyance, and the deed and both mortgages were part of one continuous transaction involving the purchase of the property. Estate of Skvorak v. Sec. Union Title Ins. Co., 140 Idaho 16, 89 P.3d 856 (2004).

Mortgage Priority.

According to Idaho's recording statutes, a mortgage recorded first in time had priority against all other subsequent mortgagees, and where the title company executed and recorded its mortgage first (twelve days before the landowners) and the owners were not good faith purchasers because they knew of the company's mortgage, such that because the owners did not record first and had at least constructive notice of the company's mortgage, the company's mortgage took priority. Estate of Skvorak v. Sec. Union Title Ins. Co., 140 Idaho 16, 89 P.3d 856 (2004).

CHAPTER 5

LIENS OF MECHANICS AND MATERIALMEN

SECTION.
45-525. General contractors — Residential property — Disclosures.

45-501. Right to lien.

ANALYSIS

Evidence.
Interest on lien.
Lien held valid.
Nature of lien.
Property subject to lien.
Who entitled to lien.

Evidence.

Although Idaho statutes do not specifically require substantial performance of a contract before a lien attaches, according to Idaho case law, a contractor is required to demonstrate substantial performance. Thus, evidence of construction defects was relevant and should have been admitted in a dispute regarding the construction of a log home. Perception Constr. Mgmt. v. Bell, 151 Idaho 250, 254 P.3d 1246 (2011).

Interest on Lien.

The statutory rate of interest to building supplier's materialman's lien on property owners' home was proper; a lack of privity between the supplier and the owners precluded application of contract interest. Franklin Bldg. Supply Co. v. Sumpter, 139 Idaho 846, 87 P.3d 955 (2004).

Lien Held Valid.

Where a builder bought materials from a supplier to use on defendants' building project, the supplier was entitled to a lien on the buildings that the project produced because, inter alia, (1) the supplier did not receive full payment for the materials the supplier furnished for the construction of the project, (2) the open account defense was inapplicable, (3) defendants remained in arrears on their debt to the builder, and (4) the lien was not destroyed by the fact that a liened building sat upon the land of a third person. BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 (2007).

Nature of Lien.

This section creates two distinct types of liens — a lien against some form of structure, alternately referred to in later sections of the lien law as an "improvement," and a lien created in favor of one who improves the land itself, by grading, leveling, and the like. A person making the first type of improvement "has a lien upon the same," i.e., the improvement itself. On the other hand, a person who improves any land by grading, filling or leveling, obtains a lien against "the same," i.e., the land. Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC, 151 Idaho 740, 264 P.3d 379 (2011).

Property Subject to Lien.

Lien is not destroyed by the fact that the liened buildings sit upon the land of a third person. BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 (2007).

Who Entitled to Lien.

In order to bring an action to collect compensation for work or labor performed and materials supplied in a construction project, the contractor must allege and prove that he was a duly registered contractor or exempt from registration at all times during the performance of such act or contract. Parkwest Homes LLC v. Barnson, 149 Idaho 603, 238 P.3d 203 (2010).

45-504. Lien for improving lots.

Application.

Because a materialmen's lien claim arising from the provision of construction labor and materials for the development of a golf course was a lien upon the land as described in § 45-501 and this section, the designation requirement of § 45-508 did not apply. Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC, 151 Idaho 740, 264 P.3d 379 (2011).

45-505. Land subject to lien.

Analysis

Extent of lien.
Lien held valid.

Extent of Lien.

Lien is not destroyed by the fact that the liened buildings sit upon the land of a third person. BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 (2007).

Lien Held Valid.

Where a builder bought materials from a supplier to use on defendants' building project, the supplier was entitled to a lien on the buildings that the project produced because, inter alia, (1) the supplier did not receive full payment for the materials the supplier furnished for the construction of the project, (2) the open account defense was inapplicable, (3) defendants remained in arrears on their debt to the builder, and (4) the lien was not destroyed by the fact that a liened building sat upon the land of a third person. BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 (2007).

45-507. Claim of lien.

Analysis

Discrepancy in claim.
Liberal construction.
Time for filing.
Verification of notice.

Discrepancy in Claim.

A lien is not invalidated simply because the claimant is not entitled to the amount claimed due in the claim of lien, even when the discrepancy is substantial. And, if an error in the amount of the claim does not invalidate the lien, it would be incongruous to read into subsection (3) a provision invalidating the lien if the claimant does not state that all just credits and offsets had been deducted when calculating the amount of the demand. Parkwest Homes LLC v. Barnson, 149 Idaho 603, 238 P.3d 203 (2010).

Liberal Construction.

The mechanic's lien statutes are liberally construed in favor of those to whom the lien is granted. To create a valid lien, the claimant must substantially comply with the statutory requirements. Parkwest Homes LLC v. Barnson, 149 Idaho 603, 238 P.3d 203 (2010).

Time for Filing.

Building supplier's materialman's lien was timely where it was filed within 90 days of a contractor's last order; strict materialmen, such as the building supplier, differed from builders who only furnished labor or labor and materials when analyzing substantial completion of contract under this section. Franklin Bldg. Supply Co. v. Sumpter, 139 Idaho 846, 87 P.3d 955 (2004).

Where a builder bought materials from a supplier to use on defendants' building project, the supplier was entitled to a lien on the buildings that the project produced because, inter alia, (1) the supplier did not receive full payment for the materials the supplier furnished for the construction of the project, (2) the lien was timely filed since an insulated storage building qualified as an "improvement" on the land, and (3) the verification of the supplier's agent was not defective since the agent's type-written name was sufficient. BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 (2007).

Verification of Notice.

Verification by oath of the claimant, that his claim is "true", rather that "just", is not a material difference. Parkwest Homes LLC v. Barnson, 149 Idaho 603, 238 P.3d 203 (2010).

Claimant's agent's signature before a notary is sufficient verification of the claim, even though it does not meet the exact form of a written oath set forth in § 51-109(2). Parkwest Homes LLC v. Barnson, 149 Idaho 603, 238 P.3d 203 (2010).

45-508. Claims against two buildings.

Analysis

Construction.
Designation.

Construction.

All work on a single project, for a single owner, and under a single contract is to be treated as a single improvement. Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC, 151 Idaho 740, 264 P.3d 379 (2011).

Designation.

Because a materialmen's lien claim arising from the provision of construction labor and materials for the development of a golf course was a lien upon the land as described in §§ 45-501 and 45-504, the designation requirement of this section did not apply; thus,

noncompliance with the section cannot cause a loss of priority. Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC, 151 Idaho 740, 264 P.3d 379 (2011).

45-510. Duration of lien.

Action Timely.

Plaintiff's motion for leave to amend its complaint, originally filed in relation to a first mechanic's lien, commenced proceedings within the statutory time period under this section on a second mechanic's lien: thus, plaintiff was not barred from filing and foreclosing on the second mechanic's lien. Terra-West, Inc. v. Idaho Mut. Trust, LLC, 150 Idaho 393, 247 P.3d 620 (2010).

45-513. Joinder of actions — Filing fees as costs — Attorney's fees.

Cited in: Franklin Bldg. Supply Co. v. Sumpter, 144 Idaho 496, 163 P.3d 1208 (Ct. App. 2003); Perception Constr. Mgmt. v. Bell, 151 Idaho 250, 254 P.3d 1246 (2011).

Attorney's Fees.

Although attorney fees on appeal by materialman's lien claimants are not available pursuant to this section, an award could be made under § 12-121 if the appeal was brought frivolously, unreasonably or without foundation. Franklin Bldg. Supply Co. v. Sumpter, 139 Idaho 846, 87 P.3d 955 (2004).

Where a builder bought materials from a supplier to use on defendants' building project and the supplier was entitled to a lien on the buildings that the project produced, the supplier was entitled to costs and fees on appeal as the prevailing party. BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 (2007).

45-525. General contractors — Residential property — Disclosures. — (1) Legislative intent. This section is intended to protect owners and purchasers of residential real property by requiring that general contractors provide adequate disclosure of potential liens.

(2) General contractor information. Prior to entering into any contract in an amount exceeding two thousand dollars ($2,000) with a homeowner or residential real property purchaser to construct, alter or repair any improvements on residential real property, or with a residential real property purchaser for the purchase and sale of newly constructed property, the general contractor shall provide to the homeowner a disclosure statement setting forth the information specified in this subsection. The statement shall contain an acknowledgment of receipt to be executed by the homeowner or residential real property purchaser. The general contractor shall retain proof of receipt and shall provide a copy to the homeowner or residential real property purchaser. The disclosure shall include the following:

(a) The homeowner or residential real property purchaser shall have the right at the reasonable expense of the homeowner or residential real property purchaser to require that the general contractor obtain lien waivers from any subcontractors providing services or materials to the general contractor;

(b) The homeowner or residential real property purchaser shall have the right to receive from the general contractor proof that the general contractor has a general liability insurance policy including completed operations in effect and proof that the general contractor has worker's compensation insurance for his employees as required by Idaho law;

(c) The homeowner or residential real property purchaser shall be informed of the opportunity to purchase an extended policy of title insurance covering certain unfiled or unrecorded liens; and

(d) The homeowner or residential real property purchaser shall have the right to require, at the homeowner's or residential real property purchaser's expense, a surety bond in an amount up to the value of the construction project.

(3) Subcontractor, materialmen and rental equipment information.

(a) A general contractor shall provide to a prospective residential real property purchaser or homeowner a written disclosure statement, which shall be signed by the general contractor listing the business names, addresses and telephone numbers of all subcontractors, materialmen and rental equipment providers having a direct contractual relationship with the general contractor and who have supplied materials or performed work on the residential property of a value in excess of five hundred dollars ($500). A general contractor is not required under this subsection to disclose subcontractors, materialmen or rental equipment providers not directly hired by or directly working for the general contractor. Such information shall be provided within a reasonable time prior to:

(i) The closing on any purchase and sales agreement with a prospective residential real property purchaser; or

(ii) The final payment to the general contractor by a homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property.

(b) All subcontractors, materialmen and rental equipment providers listed in the disclosure statement are authorized to disclose balances owed to the prospective real property purchasers or homeowners and to the agents of such purchasers or homeowners.

(c) The general contractor shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this section if the error, inaccuracy or omission was not within the personal knowledge of the general contractor.

(4) Failure to disclose. Failure to provide complete disclosures as required by this section to the homeowner or prospective residential real property purchaser shall constitute an unlawful and deceptive act or practice in trade or commerce under the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(5) Definitions. For purposes of this section:

(a) "General contractor" means a person who enters into an agreement in excess of two thousand dollars ($2,000) with:

(i) A homeowner or prospective residential real property purchaser for the construction, alteration or repair of residential real property; or

(ii) A prospective residential real property purchaser for the purchase and sale of newly constructed property.

The term "general contractor" does not include subcontractors, materialmen or rental equipment providers who do not have a direct contractual relationship with the homeowner or residential real property purchaser.

(b) "Residential real property" shall include owner and nonowner occupied real property consisting of not less than one (1) nor more than four (4) dwelling units.

(6) This section shall not apply to instances in which a homeowner or the agent of the homeowner initiates the contact with the general contractor for purposes of providing repairs necessary to meet a bona fide emergency of the homeowner or to make necessary repairs to an electrical, plumbing or water system of the homeowner.

History.
I.C., § 45-525, as added by 2002, ch. 307, § 2, p. 876; am. 2004, ch. 225, § 1, p. 667.

Compiler's Notes. Section 2 of S.L. 2004, ch. 225 declared an emergency. Approved March 23, 2004.

CHAPTER 6

CLAIMS FOR WAGES

45-601. Definitions.

Wages.

District court properly affirmed an arbitration panel's refusal to award treble damages and attorney fees on an employee's employment agreement claim because the panel did not rule that the amount owed on the employment agreement claim constituted monies owed for unpaid wages. The arbitrators awarded the employee damages under the heading of "Wage Claim," but the mere use of that shorthand term did not suggest the panel intended the award to represent wages; instead, those damages were part of a liquidated damages provision as articulated in the employment agreement. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

In a wrongful discharge case in which an employee claimed he was fired for petitioning to exercise stock options granted to him by the employer, the United States court of appeals for the Ninth Circuit requested the Idaho supreme court to accept certification of a question asking whether stock options can be wages under § 45-613 and subsection (7) of this section. Paolini v. Albertson's Inc., 418 F.3d 1023 (9th Cir. 2005).

Stock options do not fall under the definition of wages because that form of compensation is not payable in cash, with a check, or by deposit into an employee's bank account. Paolini v. Albertson's, Inc., 143 Idaho 547, 149 P.3d 822 (2006).

45-606. Payment of wages upon separation from employment.

Analysis

Contract required.
Earned paid time off.

Contract Required.

Where the court has determined that no enforceable employment contract ever existed, there is no contractual basis upon which a terminated employee can establish that a bonus was due from his former employer upon separation of employment. Gray v. Tri-way Constr. Servs., 147 Idaho 378, 210 P.3d 63 (2009).

Earned Paid Time Off.

Where a nurse was constructively discharged from her position at a clinic, but retained a limited part-time assignment at a related hospital, the hospital was entitled to summary judgment on the nurse's wage claim under subsection (1) for wages for earned paid time off: the nurse was not entitled to payment for her earned paid time off following the constructive discharge, because the wages were only due and owing when the nurse was no longer working for the hospital on any basis. Hurst v. IHC Health Servs., 817 F. Supp. 2d 1202 (D. Idaho 2011).

45-607. Penalty for failure to pay.

Cited in: Maroun v. Wyreless Sys., 141 Idaho 604, 114 P.3d 974 (2005).

45-608. Pay periods — Penalty.

Analysis

Wages.
Wages due.

Wages.

Stock options do not fall under the definition of wages because that form of compensation is not payable in cash, with a check, or by deposit into an employee's bank account. Paolini v. Albertson's, Inc., 143 Idaho 547, 149 P.3d 822 (2006).

Wages Due.

This section applies to all wages due during the month. Wages earned over a longer period of time, such as an annual bonus based upon net profits, will come due during a specific calendar month and are also covered by this section. Gray v. Tri-way Constr. Servs., 147 Idaho 378, 210 P.3d 63 (2009).

45-612. Filing false claim — Penalty.

Litigation of Issue.

In an employee's action against an employer to recover a commission on a condominium sale, after determining that judgment was properly rendered to the employer, the court declined to award attorney fees to the employer because the question of the falsity of the employee's claim had not been litigated. Bakker v. Thunder Spring-Wareham, LLC, 141 Idaho 185, 108 P.3d 332 (2005).

45-613. Discharging or retaliating against employees asserting rights under this chapter.

Stock Options.

In a wrongful discharge case in which an employee claimed he was fired for petitioning to exercise stock options granted to him by the employer, the United States court of appeals for the Ninth Circuit requested the Idaho supreme court to accept certification of a question asking whether stock options can be wages under § 45-601(7) and this section. Paolini v. Albertson's Inc., 418 F.3d 1023 (9th Cir. 2005).

Stock options do not fall under the definition of wages because that form of compensation is not payable in cash, with a check, or by deposit into an employee's bank account. Paolini v. Albertson's, Inc., 143 Idaho 547, 149 P.3d 822 (2006).

District court properly granted summary judgment based on a wrongful discharge claim under Idaho's wage laws as the facts, which involved the denial of accelerated vesting with respect to stock options, did not support a wrongful discharge claim because stock options did not constitute wages. Paolini v. Albertson's Inc., 482 F.3d 1149 (9th Cir. 2007).

45-614. Collection of wages — Limitations.

When Statute Begins to Run.

Six-month limitations period applied to a former employee's breach of contract and § 45-606(1) claims where the complaint specifically requested additional wages for specified periods of employment in the form of overtime and double time, as well as additional accrued vacation pay, which could be characterized as wages owed but unpaid. Wood v. Kinetic Sys., 766 F. Supp. 2d 1080 (D. Idaho 2011).

45-615. Collection of wage claims by suit — Attorney's fees and costs.

Analysis

Attorney fees.
Treble damages.

Attorney Fees.

With respect to his claim for $23,077 of unpaid wages, for which he received treble damages, a former corporation employee was entitled to attorney fees incurred below and on appeal. The employee was not entitled to attorney fees for the remainder of the claims he had raised on appeal. Maroun v. Wyreless Sys., 141 Idaho 604, 114 P.3d 974 (2005).

Treble Damages.

Pursuant to § 45-615(2), the district court erred by not trebling the unpaid wage amount

of $23,077 in the stipulated judgment because both parties conceded that the corporation owed $23,077 in unpaid wages and the employee had incurred the expense of instituting a lawsuit to recover his unpaid salary and that was the harm treble damages were intended to deter. Maroun v. Wyreless Sys., 141 Idaho 604, 114 P.3d 974 (2005).

District court properly affirmed an arbitration panel's refusal to award treble damages and attorney fees on an employee's employment agreement claim because the panel did not rule that the amount owed on the employment agreement claim constituted monies owed for unpaid wages. The arbitrators awarded the employee damages under the heading of "Wage Claim," but the mere use of that shorthand term did not suggest the panel intended the award to represent wages; instead, those damages were part of a liquidated damages provision as articulated in the employment agreement. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

CHAPTER 7

HOSPITAL AND NURSING CARE LIENS

45-701. Right to lien conferred.

Cited in: Williams v. Blue Cross, 151 Idaho 515, 260 P.3d 1186 (2011).

45-705. Workmen's compensation cases excepted from act.

Cited in: Williams v. Blue Cross, 151 Idaho 515, 260 P.3d 1186 (2011).

CHAPTER 8

MISCELLANEOUS LIENS

SECTION.
45-805. Liens for services on or caring for property.
SECTION.
45-810. Homeowner's association liens.

45-805. Liens for services on or caring for property. — (a) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor, or skill, employed for the protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due him from the owner, for such service. If the liens as herein provided are not paid within sixty (60) days after the work is done, service rendered or materials supplied, the person in whose favor such special lien is created may proceed to sell the property at a public auction after giving ten (10) days' public notice of the sale by advertising in some newspaper published in the county where the property is situated, or if there is no newspaper published in the county then by posting notices of the sale in three (3) of the most public places in the county for ten (10) days previous to such sale. The person shall also send the notice of auction to the owner or owners of the property and to the holder or holders of a perfected security interest in the property as provided in subsection (c) of this section. The person who is about to render any service to the owner of an article of personal property by labor or skill employed for the protection, improvement, safekeeping or carriage thereof may take priority over a prior perfected security interest by, before commencing any such service, giving notice of the intention to render

such service to any holder of a prior perfected security interest at least three (3) days before rendering such service. If the holder of the security interest does not notify said person, within three (3) days that it does not consent to the performance of such services, then the person rendering such service may proceed and the lien provided for herein shall attach to the property as a superior lien. The provisions of this section shall not apply to a motor vehicle subject to the provisions of sections 49-1809 through 49-1818, Idaho Code.

(b) Livery or boarding or feed stable proprietors, and persons pasturing livestock of any kind, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding or pasturing such livestock. If the liens as herein provided are not paid within sixty (60) days after the work is done, service rendered, or feed or pasturing supplied, the person in whose favor such special lien is created may proceed to sell the property at a public auction, after giving ten (10) days' notice to the owner or owners of the livestock and the state brand inspector. The information contained in such notice shall be verified and contain the following:

(1) The time, place and date of the public auction;

(2) The name, address and phone number of the person claiming the lien;

(3) The name, address and phone number of the owner or owners of the livestock upon which the lien has been placed;

(4) The number, breed and current brand of the livestock upon which the lien has been placed; and

(5) A statement by the lienor that the requirements of this section have been met.

(c) Notices provided in subsections (a) and (b) of this section shall be made by personal service or by certified or registered mail to the last known address of the owner or owners and any holder of a prior perfected security interest. The proceeds of the sale must be applied to the discharge of any prior perfected security interest, the lien created by this section and costs; the remainder, if any, must be paid over to the owner.

History.

R.S., § 3445; am. 1893, p. 67, § 1; reen. 1899, p. 181, § 1; reen. R.C. & C.L., § 3446; C.S., § 6412; I.C.A., § 44-705; am. 1982, ch. 262, § 1, p. 673; am. 1990, ch. 236, § 1, p. 672; am. 2012, ch. 341, § 1, p. 953.

Compiler's Notes. The 2012 amendment, by ch. 341, in subsection (b), substituted "public auction" for "licensed public livestock auction market" in the introductory paragraph and in paragraph (1).

S.L. 2012, Chapter 341 became law without the signature of the governor, effective July 1, 2012.

Loss of Lien.

Although the farmer argued that the family did not properly foreclose their lien because they did not follow the statutory procedure prescribed by subsection (b) for selling the cattle, the family did not sell the cattle, however, the county did; although a lien dependent on possession was lost if the holder of the lien voluntarily relinquished possession of the property or restored it to the owner, the family did not do so as it was the county, in the exercise of its police power, that took the cattle from the family's dairy. Twin Falls County v. Coates, 139 Idaho 442, 80 P.3d 1043 (2003).

45-808. Lien of banker.

Lien Denied.

Bank lost possession of funds when it turned them over to the trustee, and having done so, it was obligated to take prompt action, including filing a motion for relief from the automatic stay and requesting adequate protection, to preserve its possessory lien rights, but it failed to do so. Because it lacked possession of the funds, and it had unnecessarily delayed asserting its rights, the bank could not seek a banker's lien upon the funds the trustee held. In re Lifestyle Furnishings, LLC, 418 B.R. 382 (Bankr. D. Idaho 2009).

45-810. Homeowner's association liens. — (1) Whenever a homeowner's association levies an assessment against a lot for the reasonable costs incurred in the maintenance of common areas consisting of real property owned and maintained by the association, the association, upon complying with subsection (2) of this section, shall have a lien upon the individual lot for such unpaid assessments accrued in the previous twelve (12) months.

(2)(a) An association claiming a lien under subsection (1) of this section shall file in the county in which the lot or some part thereof is located a claim containing:

(i) A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;

(ii) The name of the owner, or reputed owner, if known;

(iii) The name of the association; and

(iv) A description, sufficient for identification, of the property to be charged with the lien.

(b) When a claim has been filed and recorded pursuant to this section and the owner of the lot subject to the claim thereafter fails to pay any assessment chargeable to such lot, then so long as the original or any subsequent unpaid assessment remains unpaid, such claim shall automatically accumulate the subsequent unpaid assessments without the necessity of further filings under this section.

(c) The claim shall be verified by the oath of an individual having knowledge of the facts and shall be recorded by the county recorder. The record shall be indexed as other liens are required by law to be indexed.

(d) Within five (5) business days after recording a lien on the property, the association shall serve, by personal delivery to the owner or reputed owner or by certified mail to the last known address of the owner or reputed owner, a true and correct copy of the recorded lien.

(3) The lien may be continued in force for a period of time not to exceed one (1) year from the date the claim is filed and recorded under subsection (2) of this section; provided however, that such period may be extended by the homeowner's association for not to exceed one (1) additional year by recording a written extension thereof. For the purpose of determining the date the claim is filed in those cases when subsequent unpaid assessments have accumulated under the claim as provided in subsection (2) of this section, the claim regarding each unpaid assessment shall be deemed to have been filed at the time such unpaid assessment became due. The lien may be enforced by the board of directors acting on behalf of the association.

(4) This section does not prohibit a homeowner's association from pursu-

ing an action to recover sums for which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satisfaction of the lien.

(5) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made.

(6) As used in this section, "homeowner's association" means any incorporated or unincorporated association:

(a) In which membership is based upon owning or possessing an interest in real property; and

(b) That has the authority, pursuant to recorded covenants, bylaws or other governing instruments, to assess and record liens against the real property of its members.

(7) In order to file a lien as provided in this section, a homeowner's association that is an unincorporated association must be governed by bylaws which provide for at least the following:

(a) A requirement that the homeowner's association hold at least one (1) meeting each calendar year;

(b) A requirement that notice of any meeting of the homeowner's association be published and distributed to all members of the homeowner's association;

(c) A requirement that the minutes of all homeowner's association meetings be recorded;

(d) A method of adopting and amending fees; and

(e) A provision providing that no fees or assessments of the homeowner's association may be increased unless a majority of all members of the homeowner's association vote in favor of such increase.

History.
I.C., § 45-810, as added by 2002, ch. 275, § 1, p. 807; am. 2010, ch. 41, § 1, p. 72.

Compiler's Notes. The 2010 amendment, by ch. 41, substituted "five (5) business days" for "twenty-four (24) hours" in subsection (2)(d).

CHAPTER 9

MORTGAGES IN GENERAL

45-902. Mortgage must be in writing.

Formalities of Document.

Mortgage which a business gave to a husband and wife to secure debts the business allegedly owed the husband and wife was not valid under § 55-601 and this section, because the husband and wife did not include their complete mailing address on the instrument, or incorporate their address by reference to some other document. Hopkins v. Thomason Farms, Inc. (In re Thomason), Case No. 03-42400, 2009 Bankr. LEXIS 1769 (Bankr. D. Idaho June 24, 2009).

A property description in a real estate sales contract that consisted solely of a physical address did not satisfy the statute of frauds. In re McMurdie, 448 B.R. 826 (Bankr. D. Idaho 2010).

45-904. Transfers deemed mortgages.

Determination of Question.

A warranty deed along with an agreement to reconvey the property in the future was an outright conveyance rather than a mortgage,

where the transaction did not secure any debt, defendants' predecessors could reacquire the property by paying certain sums to plaintiffs' predecessors, but they were not obligated to make those payments, and amount paid by plaintiffs' predecessors was the fair market value of the real property at the time of the transaction. Hogg v. Wolske, 142 Idaho 549, 130 P.3d 1087 (2006).

45-905. Defeasance may be shown by parol.

Cited in: Hogg v. Wolske, 142 Idaho 549, 130 P.3d 1087 (2006).

CHAPTER 13

GENERAL PROVISIONS RELATING TO ENFORCEMENT OF LIENS AND MORTGAGES

SECTION.
45-1302. Determination of all rights upon foreclosure proceedings.

45-1302. Determination of all rights upon foreclosure proceedings. — In any suit brought to foreclose a mortgage or lien upon real property or a lien on or security interest in personal property, the plaintiff, cross-complainant or plaintiff in intervention may make as party defendant in the same cause of action, any person having, claiming or appearing to have or to claim any title, estate, or interest in or to any part of the real or personal property involved therein, and the court shall, in addition to granting relief in the foreclosure action, determine the title, estate or interest of all parties thereto in the same manner and to the same extent and effect as in the action to quiet title.

History.
1929, ch. 113, § 1, p. 182; I.C.A., § 44-1104; am. 1937, ch. 21, § 1, p. 32; am. 1967, ch. 272, § 21, p. 745; am. 2010, ch. 79, § 16, p. 133.

Compiler's Notes. The 2010 amendment, by ch. 79, deleted "including parties mentioned in section 5-325" following "any person."

CHAPTER 15

TRUST DEEDS

SECTION.
45-1502. Definitions — Trustee's charge.
45-1504. Trustee of trust deed — Who may serve — Successors.
45-1505. Foreclosure of trust deed, when.
45-1506. Manner of foreclosure — Notice — Sale.
45-1506C. Supplemental notice — Opportunity to request loan modification.
45-1510. Trustee's deed — Recording — Effect.

45-1502. Definitions — Trustee's charge. — As used in this act:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust deed as security for the performance of an obligation.

(3) "Trust deed" means a deed executed in conformity with this act and

conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by trust deed, or his successor in interest.

(5) "Real property" means any right, title, interest and claim in and to real property owned by the grantor at the date of execution of the deed of trust or acquired thereafter by said grantor or his successors in interest. Provided, nevertheless, real property as so defined which may be transferred in trust under this act shall be limited to: (a) any real property located within an incorporated city or village at the time of the transfer; (b) any real property not exceeding eighty (80) acres, regardless of its location, provided that such real property is not principally used for the agricultural production of crops, livestock, dairy or aquatic goods; or (c) any real property not exceeding forty (40) acres regardless of its use or location.

(6) The trustee shall be entitled to a reasonable charge for duties or services performed pursuant to the trust deed and this chapter, including compensation for reconveyance services notwithstanding any provision of a deed of trust prohibiting payment of a reconveyance fee by the grantor or beneficiary, or any provision of a deed of trust which limits or otherwise restricts the amount of a reconveyance fee to be charged and collected by the trustee. A trustee shall be entitled to refuse to reconvey a deed of trust until the trustee's reconveyance fees and recording costs for recording the reconveyance instruments are paid in full. The trustee shall not be entitled to a foreclosure fee in the event of judicial foreclosure or work done prior to the recording of a notice of default. If the default is cured prior to the time of the last newspaper publication of the notice of sale, the trustee shall be paid a reasonable fee.

History.

1957, ch. 181, § 2, p. 345; am. 1967, ch. 118, § 2, p. 251; am. 1970, ch. 42, § 1, p. 89; am. 1983, ch. 190, § 1, p. 514; am. 1995, ch. 326, § 2, p. 1092; am. 1996, ch. 248, § 1, p. 783; am. 1997, ch. 387, § 1, p. 1242; am. 2008, ch. 365, § 1, p. 1000.

Compiler's Notes. The 2008 amendment, by ch. 365, in subsection (5)(b), substituted "eighty (80) acres" for "forty (40) acres," and substituted "provided that such real property is not principally used for the agricultural production of crops, livestock, dairy or aquatic goods" for "and in either event where the trust deed states that the real property involved is within either of the above provisions, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make such transfer and trust and power of sale conferred in this act"; and added subsection (5)(c).

Analysis

Mobile homes.

Required statement.

Mobile Homes.

Mobile home was affixed to the land at the time of a non-judicial foreclosure sale and was, therefore, real property. As real property, the mobile home was subject to a deed of trust and properly transferred to the trustee at the sale pursuant to § 45-1503 and this section Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009).

Required Statement.

If a trust deed recites that the property described complies with the acreage requirement of this section, such statement is conclusive with respect to compliance with the statute. Even had the deed of trust not recited that the property conveyed the requisite acreage, that defect would not render the instrument ineffective to create a lien. While the beneficiary would likely lose the right to foreclose the deed of trust by private sale, the instrument would be treated as a mortgage subject to judicial foreclosure. Hymas v. Am. Gen. Fin., Inc. (In re Blair), 2000 Bankr. LEXIS 2115 (Bankr. D. Idaho May 18, 2000).

45-1503. Transfers in trust to secure obligation — Foreclosure.

Mobile Homes.

Mobile home was affixed to the land at the time of a non-judicial foreclosure sale and was, therefore, real property. As real property, the mobile home was subject to a deed of trust and properly transferred to the trustee at the sale pursuant to § 45-1502 and this section Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009).

45-1504. Trustee of trust deed — Who may serve — Successors. — (1) The trustee of a trust deed under this act shall be:

(a) Any member of the Idaho state bar;

(b) Any bank or savings and loan association authorized to do business under the laws of Idaho or the United States;

(c) An authorized trust institution having a charter under chapter 32, title 26, Idaho Code, or any corporation authorized to conduct a trust business under the laws of the United States; or

(d) A licensed title insurance agent or title insurance company authorized to transact business under the laws of the state of Idaho.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

History.

1957, ch. 181, § 4, p. 345; am. 1969, ch. 155, § 1, p. 482; am. 1983, ch. 190, § 2, p. 514; am. 2005, ch. 236, § 3, p. 717.

Successor Trustee.

Deed of trust beneficiary's appointment of a trustee the day before the deed of trust was assigned to it was valid; under subsection (2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment. Russell v. Onewest Bank FSB, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 121836 (D. Idaho Oct. 20, 2011).

45-1505. Foreclosure of trust deed, when. — The trustee may foreclose a trust deed by advertisement and sale under this act if:

(1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in mortgage records in the counties in which the property described in the deed is situated; and

(2) There is a default by the grantor or other person owing an obligation the performance of which is secured by the trust deed or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and

(3) The trustee or beneficiary shall have (a) filed for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, a notice of default identifying the deed of trust by stating the name or names of the trustor or trustors and giving the book and page

where the same is recorded, or a description of the trust property, and containing a statement that a breach of the obligation for which the transfer in trust is security has occurred, and setting forth the nature of such breach and his election to sell or cause to be sold such property to satisfy such obligation; and (b) mailed a copy of such notice by registered or certified mail, return receipt requested, to any person requesting such notice of record as provided in section 45-1511, Idaho Code. Service by mail in accordance with this subsection (3) shall be deemed effective at the time of mailing. In addition, the trustee shall mail the notice required in this section to any individual who owns an interest in property which is the subject of this section. Such notice shall be accompanied by and affixed to the following notice in twelve (12) point boldface type, on a separate sheet of paper, no smaller than eight and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option.".

If the trust deed, or any assignments of the trust deed, are in the Spanish language, the written notice set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

(4) No action, suit or proceeding has been instituted to recover the debt then remaining secured by the trust deed, or any part thereof, or if such action or proceeding has been instituted, the action or proceeding has been dismissed.

History.

1957, ch. 181, § 5, p. 345; am. 1990, ch. 401, § 1, p. 1122; am. 2008, ch. 192, § 2, p. 603; am. 2009, ch. 136, § 1, p. 417.

Compiler's Notes. The 2008 amendment, by ch. 192, in subsection (3), added the third and fourth sentences, the notice, and the last paragraph.

The 2009 amendment, by ch. 136, in subsection (3), deleted "canary yellow or some similarly colored yellow" following "on a separate sheet of" just prior to the notice.

Notice of Trustee's Sale.

Lender complied with this section in effecting a foreclosure sale of Chapter 11 debtors' property where the deed of trust was recorded, the debtors were in default, a notice of default stating the debtors' breach was recorded, and the debtors were properly served; the claim by the debtors that the lender did not provide the notice required by the deed of trust did not invalidate the sale because the debtors failed to establish that the alleged breach of the deed of trust would vitiate the statutory foreclosure process. Thorian v. BARO Enters., LLC (In re Thorian), 387 B.R. 50 (Bankr. D. Idaho 2008).

45-1506. Manner of foreclosure — Notice — Sale. — (1) A trust deed may be foreclosed in the manner provided in this section.

(2) Subsequent to recording notice of default as hereinbefore provided, and at least one hundred twenty (120) days before the day fixed by the trustee for the trustee's sale, notice of such sale shall be given by registered or certified mail, return receipt requested, to the last known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed and any person requesting notice of record as provided in section 45-1511, Idaho Code.

(b) Any successor in interest of the grantor including, but not limited to, a grantee, transferee or lessee, whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.

(c) Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such lien or interest.

(3) The disability, insanity or death of any person to whom notice of sale is to be given under subsection (2) of this section shall not delay or impair in any way the trustee's right under a trust deed to proceed with a sale under such deed, provided the notice of sale required under subsection (2) of this section has been mailed as provided by law for service of summons upon incompetents or to the administrator or executor of the estate of such person.

(4) The notice of sale shall set forth:

(a) The names of the grantor, trustee and beneficiary in the trust deed.

(b) A description of the property covered by the trust deed.

(c) The book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded.

(d) The default for which the foreclosure is made.

(e) The sum owing on the obligation secured by the trust deed.

(f) The date, time and place of the sale which shall be held at a designated time after 9:00 a.m. and before 4:00 p.m., standard time, and at a designated place in the county or one (1) of the counties where the property is located.

(5) At least three (3) good faith attempts shall be made on different days over a period of not less than seven (7) days each of which attempts must be made at least thirty (30) days prior to the day of the sale to serve a copy of the notice of sale upon an adult occupant of the real property in the manner in which a summons is served. At the time of each such attempt, a copy of the notice of sale shall be posted in a conspicuous place on the real property

unless the copy of the notice of sale previously posted remains conspicuously posted. Provided, however, that if during such an attempt personal service is made upon an adult occupant and a copy of the notice is posted, then no further attempt at personal service and no further posting shall be required. Provided, further, that if the adult occupant personally served is a person to whom the notice of sale was required to be mailed, and was mailed, pursuant to the foregoing subsections of this section, then no posting of the notice of sale shall be required.

(6) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four (4) successive weeks, making four (4) publishings in all, with the last publication to be at least thirty (30) days prior to the day of sale. It shall be unlawful for the trustee for the trustee's sale to have a financial interest in a newspaper publishing such notice or to profit, directly or indirectly, based on the publication of such notice of sale and such conduct shall constitute a misdemeanor, punishable by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed one thousand dollars ($1,000), or by both such fine and imprisonment.

(7) An affidavit of mailing notice of sale and an affidavit of posting, when required, and publication of notice of sale as required by subsection (6) of this section shall be recorded in the mortgage records in the counties in which the property described in the deed is situated at least twenty (20) days prior to the date of sale.

(8) The sale shall be held on the date and at the time and place designated in the notice of sale or notice of rescheduled sale as provided in section 45-1506A, Idaho Code, unless the sale is postponed as provided in this subsection or as provided in section 45-1506B, Idaho Code, respecting the effect of an intervening stay or injunctive relief order. The trustee shall sell the property in one (1) parcel or in separate parcels at auction to the highest bidder. Any person, including the beneficiary under the trust deed, may bid at the trustee's sale. The attorney for such trustee may conduct the sale and act in such sale as the auctioneer of trustee. The trustee may postpone the sale of the property upon request of the beneficiary by publicly announcing at the time and place originally fixed for the sale, the postponement to a stated subsequent date and hour. No sale may be postponed to a date more than thirty (30) days subsequent to the date from which the sale is postponed. A postponed sale may itself be postponed in the same manner and within the same time limitations as provided in this subsection. For any loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering the borrower's primary residence, as determined pursuant to section 45-1506C(1), Idaho Code, the trustee, prior to conducting any trustee's sale previously postponed pursuant to this section, shall mail notice of such trustee sale at least fourteen (14) days prior to conducting such sale by the same means and to the same persons as provided in subsection (2) of this section. The trustee or beneficiary shall, prior to conducting the trustee's sale, record an affidavit of mailing confirming that such notice has been mailed as required by this section. The filing of such affidavit of mailing is conclusive evidence of compliance with this section as to any party relying on said affidavit of mailing.

(9) The purchaser at the sale shall forthwith pay the price bid and upon receipt of payment the trustee shall execute and deliver the trustee's deed to such purchaser, provided that in the event of any refusal to pay purchase money, the officer making such sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.

(10) The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed together with any interest the grantor or his successors in interest acquired after the execution of such trust deed.

(11) The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession thereafter under any interest except one prior to the deed of trust shall be deemed to be tenants at sufferance.

(12) Whenever all or a portion of any obligation secured by a deed of trust which has become due by reason of a default of any part of that obligation, including taxes, assessments, premiums for insurance or advances made by a beneficiary in accordance with the terms of the deed of trust, the grantor or his successor in interest in the trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record thereon, at any time within one hundred fifteen (115) days of the recording of the notice of default under such deed of trust, if the power of sale therein is to be exercised, or otherwise at any time prior to the entry of a decree of foreclosure, may pay to the beneficiary or their successors in interest, respectively, the entire amount then due under the terms of the deed of trust and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation and a reasonable trustee's fee subject to the limitations imposed by subsection (6) of section 45-1502, Idaho Code, and attorney's fees as may be provided in the promissory note, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust shall be reinstated and shall be and remain in force and effect, the same as if no acceleration had occurred.

(13) Any mailing to persons outside the United States and its territories required by this chapter may be made by ordinary first class mail if certified or registered mail service is unavailable.

(14) Service by mail in accordance with the provisions of this section shall be deemed effective at the time of mailing.

History.

1957, ch. 181, § 6, p. 345; am. 1967, ch. 74, § 1, p. 170; am. 1983, ch. 190, § 3, p. 514; am. 1990, ch. 401, § 2, p. 1122; am. 2011, ch. 323, § 1, p. 939; am. 2012, ch. 326, § 1, p. 905.

Compiler's Notes. The 2011 amendment, by ch. 323, added the last three sentences in subsection (8).

The 2012 amendment, by ch. 326, added the second sentence in subsection (6).

Section 4 of S.L. 2011, ch. 323 provided: "This act shall be in full force and effect on and after September 1, 2011."

Section 2 of S.L. 2012, ch. 326 declared an emergency. Approved April 5, 2012.

ANALYSIS

Excessive bid.
Procedure.

Excessive Bid.

Because the lender bid in excess of the

amount of credit available to it under one of the deeds of trust, it did not pay the price owing before the trustee executed the trustee's deed as required by this section. However, it was unnecessary to set aside the sale, as the sale became final when the trustee accepted the lender's bid. Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009).

Procedure.

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to subsection (8) of this section; but if a stay is in effect on the date of a scheduled sale, postponement proceeds according to § 45-1506A. If a stay has been lifted before the scheduled sale date, then postponement proceeds according to § 45-1506B. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

Unlike sales postponed under § 45-1506A or this section, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under § 45-1506B is simply rescheduled at the original sale and no further notice of any kind is necessary. A bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to § 45-1506B(3) has no reason to inquire whether the trustee is following the proper postponement statute and, thus, may have no knowledge that the actual notice provisions were not complied with. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

Lender complied with this section in effecting a foreclosure sale of Chapter 11 debtors' property where the notice of sale was published in the Idaho Statesman; the claim by the debtors that the lender did not provide the notice required by the deed of trust did not invalidate the sale because the debtors failed to establish that the alleged breach of the deed of trust would vitiate the statutory foreclosure process. Thorian v. BARO Enters., LLC (In re Thorian), 387 B.R. 50 (Bankr. D. Idaho 2008).

This section requires that notice of the foreclosure sale be mailed to the personal representative of the estate of the deceased person who was entitled to notice. At the time the notice was mailed in this case, the owner was not the personal representative of the estate; the fact that she was appointed as personal representative eighteen months later did not retroactively validate the failure to comply with the section. PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180 (2009).

Where a mortgagor defaulted upon her mortgage loan repayment obligation, a trustee's sale was scheduled, the sale was postponed when the mortgagor agreed to make a partial payment in exchange for the postponement. The trustee verbally announced the time and place for the rescheduled sale, and the property was sold at the rescheduled sale. The buyer instituted an ejectment action to remove the mortgagor from the property, and the mortgagor claimed that she was deprived of due process because she did not receive notice of the postponed sale date. The notice was sufficient because the trustee's announcement at the original sale date complied with subsection (8) of this section. While the mortgagor might have prevailed if she had persisted in her argument that the sale had been cancelled rather than postponed, her attorney failed to pursue this argument on appeal, and the court was not in a position to act upon a ground not presented on appeal. Black Diamond Alliance, LLC v. Kimball, 148 Idaho 798, 229 P.3d 1160 (2010).

45-1506A. Rescheduled sale — Original sale barred by stay — Notice of rescheduled sale.

Analysis

Effect of bankruptcy stay.
Failure to comply.
Procedure.

Effect of Bankruptcy Stay.

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to § 45-1506(8); but if a stay is in effect on the date of a scheduled sale, postponement proceeds according to this section. If a stay has been lifted before the scheduled sale date, then postponement proceeds according to § 45-1506B. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

Failure to Comply.

Although a credit bid used by a purchaser at a trustee's sale was the equivalent of a cash sale, the sale was void because the trustee failed to comply with notice provisions of this section. The trustee's compliance with § 45-1506B was immaterial where the borrower had no notice of the first rescheduled sale date after a bankruptcy stay went into effect. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

Procedure.

Unlike sales postponed under § 45-1506 or this section, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under § 45-1506B is simply rescheduled at the original sale and no

further notice of any kind is necessary. A bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to § 45-1506B(3) has no reason to inquire whether the trustee is following the proper postponement statute and, thus, may have no knowledge that the actual notice provisions were not complied with. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

45-1506B. Postponement of sale — Intervention of stay.

Analysis

Applicability.
Failure to comply.
Procedure.

Applicability.

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to § 45-1506(8); but if a stay is in effect on the date of a scheduled sale, postponement proceeds according to § 45-1506A. If a stay has been lifted before the scheduled sale date, then postponement proceeds according to this section. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

Failure to Comply.

Although a credit bid used by a purchaser at a trustee's sale was the equivalent of a cash sale, the sale was void because the trustee failed to comply with notice provisions of § 45-1506A. The trustee's compliance with this section was immaterial where the borrower had no notice of the first rescheduled sale date after a bankruptcy stay went into effect. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

Procedure.

Unlike sales postponed under §§ 45-1506 or 45-1506A, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under this section is simply rescheduled at the original sale and no further notice of any kind is necessary. A bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to subsection (3) of this section has no reason to inquire whether the trustee is following the proper postponement statute and, thus, may have no knowledge that the actual notice provisions were not complied with. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

45-1506C. Supplemental notice — Opportunity to request loan modification. — (1) In the case of a loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering a borrower's primary residential property for any noncommercial loan, the notice provided in this section shall accompany the notice of default provided to the grantor. The beneficiary or its agent shall determine whether the subject real property is a borrower's primary residence by searching the county assessor's tax rolls prior to recording a notice of default to confirm whether such real property has been granted a homeowner's property tax exemption pursuant to section 63-602G, Idaho Code. Any property for which a homeowner's property tax exemption has been granted for the year in which the notice of default is recorded shall be deemed to be a borrower's primary residential dwelling. If no homeowner's property tax exemption has been granted for the year in which the notice of default is recorded, the provisions of this section shall not apply. The notice, if required, shall be printed in at least 14-point type and substantially conform to the following form:

IMPORTANT NOTICE:
YOU ARE IN DANGER OF LOSING YOUR PROPERTY
IF YOU DO NOT TAKE ACTION IMMEDIATELY

This notice concerns the mortgage loan for your property at (enter the complete address).

You have not fulfilled your contractual obligations under the terms of your mortgage loan. Under Idaho law, the holder of your loan, "the beneficiary," can sell your property to satisfy your obligation.

As of (enter the date), you needed to pay $(enter the amount owed) to bring your mortgage loan current. That amount may have increased since that date and may include additional costs and fees described in the loan documents.

The beneficiary can provide you with the exact amount that you owe, but you have to ask. Call (enter the toll-free telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to obtain other details about your loan. You also can send a written request for this information by certified mail to: (enter the complete address).

LOAN MODIFICATION ASSISTANCE

If you want to save your home from foreclosure but you cannot afford your current loan payments, you need to contact the beneficiary immediately to ask about any available loss mitigation programs. You may or may not qualify for a loan modification or other alternative to foreclosure.

You may request to meet with the beneficiary to discuss options for modifying your loan.

IF YOU WANT TO APPLY FOR A MODIFICATION OF YOUR LOAN, YOU MUST COMPLETE AND RETURN THE ENCLOSED "MODIFICATION REQUEST FORM" BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE BENEFICIARY MUST RECEIVE THE FORM ON OR BEFORE (enter the date), WHICH IS THIRTY (30) DAYS AFTER THE DATE BELOW.

WARNING: You may get offers from people who tell you they can help you keep your property. Never pay someone to help you obtain a loan modification. Help is available for free from housing counselors who are certified through the department of housing and urban development. Visit www.hud.gov for a current list of certified housing counselors in Idaho.

DATED: (enter the date)
Beneficiary name: (print name)
Beneficiary or beneficiary's agent's signature: (sign name)
Beneficiary's telephone number: (enter the toll-free telephone number)

(2)(a) The notice required under subsection (1) of this section must be accompanied by a form to request a loan modification. The form must include the address to which and state the date by which the grantor must return the form. The form may state that the grantor must disclose current information about the grantor's income and expenses, the grantor's address, phone number and electronic mail address and other facts that may affect the grantor's eligibility for a loan modification.

(b) If the trust deed, or any assignments of the trust deed, is in the Spanish language, the notice required under subsection (1) of this section and the form identified in paragraph (a) of this subsection shall be in the Spanish language.

(3) If a grantor returns the form identified in subsection (2) of this section to the beneficiary by the date specified on the form, the beneficiary or the beneficiary's agent shall review the information the grantor provided in the form and shall evaluate the grantor's request. The beneficiary or the beneficiary's agent, as soon as reasonably practicable but not later than forty-five (45) days after receiving the form, shall notify the grantor in writing whether the beneficiary approves or denies the request or requires additional information. A trustee's sale for the property subject to the loan may not occur until after the beneficiary or the beneficiary's agent timely responds to the grantor. During the forty-five (45) day period, the beneficiary or the beneficiary's agent may request the grantor to provide additional information required to determine whether the loan can be modified.

(4)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall either meet with the grantor in person or speak to the grantor by telephone before the beneficiary or the beneficiary's agent responds to the grantor's request to modify the loan. If the grantor requests the meeting, the beneficiary or the beneficiary's agent shall schedule the meeting by contacting the grantor at the grantor's last known address or telephone number or at the grantor's electronic mail address, if the grantor indicates on the loan modification form that the beneficiary or the beneficiary's agent can contact the grantor at the electronic mail address.

(b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this subsection even if the beneficiary or the beneficiary's agent does not speak to or meet with the grantor if, within seven (7) business days after the beneficiary or the beneficiary's agent attempts to contact the grantor, the grantor does not schedule a meeting, or fails to attend a scheduled meeting or telephone call.

(c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able to obtain authority to modify the loan.

(5) At least twenty (20) days prior to the date of sale, the trustee shall file for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, an affidavit substantially in the following form from the beneficiary or the beneficiary's agent which states that the beneficiary or the beneficiary's agent has complied with the provisions of this section. The filing of the following affidavit of compliance is conclusive evidence of compliance with this section as to any party relying on said affidavit of compliance:

AFFIDAVIT OF COMPLIANCE WITH IDAHO CODE SECTION 45-1506C

COMES NOW ..... , being first duly sworn, deposes and says:

1. I am the (title — officer or agent) of (name of beneficiary), the beneficiary of the Deed of Trust recorded as instrument number (recorder's instrument number), County of (County), Idaho, the "Deed of Trust."

2. Beneficiary or Beneficiary's agent has complied with section 45-1506C, Idaho Code, in by: (a) providing the notice required in section 45-1506C(1), Idaho Code; (b) providing the loan modification request form required in section 45-1506C(2), Idaho Code; (c) evaluating the request for modification and providing a written response to the request as required in section 45-1506C(3), Idaho Code; and (d) scheduling, and if attended by the grantor of the Deed of Trust, attending, in person or by telephone, the meeting required in section 45-1506C(4), Idaho Code.

.....
SIGNATURE

(INSERT NOTARY SUBSCRIPTION FOR STATE IN WHICH AFFIDAVIT IS EXECUTED; IDAHO FORM OF SUBSCRIPTION IS SET OUT BELOW)

STATE OF IDAHO)
)
County of .....)

On this ..... day of (month), 20.. , before me, ... , a Notary Public in and for said state, personally appeared ..... , known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that such officer or agent executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....
Notary Public for Idaho
Residing at .....
My Commission expires .....

(6) Whenever the attorney general has reason to believe that any person has failed to follow the requirements of this section and that proceedings would be in the public interest, he may bring an action in the name of the state against such person for enforcement of the provisions of this section with the same procedure and in the same manner as granted the attorney general and district court pursuant to section 48-606(1)(a), (b), (d), (e) and (f) and subsections (2) through (5), Idaho Code, of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(7) All penalties, costs and fees received or recovered by the attorney general shall be remitted to the consumer protection account and expended pursuant to section 48-606(5), Idaho Code.

History.
I.C., § 45-1506C, as added by 2011, ch. 323, § 2, p. 939.

Compiler's Notes. Section 4 of S.L. 2011, ch. 323 provided: "This act shall be in full force and effect on and after September 1, 2011."

45-1507. Proceeds of sale — Disposition.

Non-equity Proceeding.

The statutory scheme for non-judicial foreclosure of deeds of trust and the distribution of surplus proceeds from a sale are not subject to the principles of equity, even if a debtor who defaulted under two separate promissory notes will obtain a windfall following the sale. Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009).

45-1508. Finality of sale.

Cited in: PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180 (2009).

Irregularity In Sale.

This section does not require that the grantor to a deed of trust demonstrate harm resulting from an irregularity in a non-judicial foreclosure sale in order to have the sale set aside. The district court may not impose this additional requirement, thereby increasing the grantor's burden. Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009).

45-1510. Trustee's deed — Recording — Effect. — (1) When the trustee's deed is recorded in the deed records of the county where the property described in the deed is located, the recitals contained in the deed and in the affidavits required under section 45-1506, subsection (7), Idaho Code, shall be prima facie evidence in any court of the truth of the recitals and the affidavits. However, the recitals and affidavits are conclusive in favor of a purchaser in good faith for value or any successor in interest thereof. For purposes of this section, the trustee's deed shall be deemed effective as of the date and time on which the sale was held if such deed is recorded within fifteen (15) days after the date of sale or the first business day following the fifteenth day if the county recorder of the county in which the property is located is closed on the fifteenth day.

(2) Where a trustee's sale held pursuant to section 45-1506, Idaho Code, is invalid by reason of automatic stay provisions of the U.S. bankruptcy code, or a stay order issued by any court of competent jurisdiction or otherwise, recordation of a notice of rescission of the trustee's deed shall restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the recordation of the trustee's deed upon sale. Only the trustee or beneficiary who caused the trustee's deed to be recorded, or his/its successor in interest, may record a notice of rescission. The notice of rescission shall accurately identify the deed of trust, the recording instrument numbers used by the county recorder or the book and pages at which the trustee's deed and deed of trust are recorded, the names of all grantors, trustors and beneficiaries, the location of the property subject to the deed of trust and the reason for rescission. Such notice of rescission shall be in substantially the following form:

NOTICE OF RESCISSION OF TRUSTEE'S DEED UPON SALE

This Notice of Rescission is made this day ..... with respect to the following:

1. THAT ..... is the duly appointed Trustee under the certain Deed of Trust dated ..... and recorded ..... as instrument number ..... in book ....., page ....., wherein ..... and ..... are named as Trustors, ... is named as Trustee, ... is named as Beneficiary;

2. THAT ..... is the Beneficiary of record under said Deed of Trust;
3. THAT THE DEED OF TRUST encumbers real property located in the County of ....., State of Idaho, described as follows:

Property Description

4. THAT BY VIRTUE OF a default under the terms of the Deed of Trust, the Beneficiary did declare a default, as set forth in a Notice of Default recorded ..... as instrument number ..... in book ....., page ....., in the office of the Recorder of ..... County, State of Idaho;
5. THAT THE TRUSTEE has been informed by the Beneficiary that the Beneficiary desires to rescind the Trustee's Deed recorded upon the foreclosure sale that was conducted in error due to a failure to communicate timely, notice of conditions that would have warranted a cancellation of the foreclosure that did occur on .....;
6. THAT THE EXPRESS PURPOSE of this Notice of Rescission is to return the priority and existence of all title and lienholders to the status quo ante as existed prior to the Trustee's sale.

NOW THEREFORE, THE UNDERSIGNED HEREBY RESCINDS THE TRUSTEE'S SALE AND PURPORTED TRUSTEE'S DEED UPON SALE AND HEREBY ADVISES ALL PERSONS THAT THE TRUSTEE'S DEED UPON SALE DATED ..... AND RECORDED ..... AS ..... INSTRUMENT NUMBER ..... IN THE COUNTY OF ....., STATE OF IDAHO, FROM ..... (TRUSTEE) TO ..... (GRANTEE) IS HEREBY RESCINDED, AND IS AND SHALL BE OF NO FORCE AND EFFECT WHATSOEVER. THE DEED OF TRUST DATED ....., RECORDED ..... AS INSTRUMENT NUMBER ..... IN BOOK ....., PAGE ....., IS IN FULL FORCE AND EFFECT.

.....
Authorized Signatory

Acknowledgment

History.
1957, ch. 181, § 10, p. 345; am. 1990, ch. 401, § 4, p. 1122; am. 2010, ch. 249, § 1, p. 639.

Compiler's Notes. The U.S. bankruptcy code, referred to in the introductory paragraph in subsection (2), is codified as 11 U.S.C.S. § 101 et seq.

The 2010 amendment, by ch. 249, added the subsection (1) designation and therein added the last sentence; and added subsection (2).

Good Faith Requirement.

Although a credit bid used by a purchaser at a trustee's sale was the equivalent of a cash sale, the sale was void because the trustee failed to comply with notice provisions of § 45-1506A. If the deed transferee knew of the deficiencies, it would not be entitled to bona fide purchaser protections set forth in this section. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006).

45-1512. Money judgment — Action seeking balance due on obligation.

Cited in: In re Ricks, Case No. 09-00215-JDP, 2010 Bankr. LEXIS 3784 (Bankr. D. Idaho Oct. 27, 2010).

Applicability.

Because the time period within which the mortgage company could have sought a defi-

ciency judgment had long passed, the owners failed to show an accounting could be relevant to any issues in the case. PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180 (2009).

CHAPTER 16

CONSUMER FORECLOSURE PROTECTION ACT

SECTION.
45-1601. Legislative findings.
45-1602. Contract notice.
45-1603. Right of rescission of contract.
45-1604. Exclusions.
45-1605. Penalties.

45-1601. Legislative findings. — The legislature finds that some persons and businesses are engaging in patterns of conduct that defraud innocent homeowners of their title, equity interest, or other value in residential dwellings under the guise of stopping or postponing a foreclosure sale. The legislature also finds this activity to be contrary to the public policy of this state and therefore establishes notice requirements governing contracts or agreements entered into during the foreclosure period. The legislature further finds that the provisions of this chapter shall be construed in such a manner that it does not inhibit transactions with legitimate lenders and investors.

History.
I.C., § 45-1601, as added by 2008, ch. 192, § 1, p. 601.

45-1602. Contract notice. — (1) During the foreclosure period described in section 45-1506, Idaho Code, any contract or agreement with the owner or owners of record that involves the transfer of any interest in residential real property, as defined in section 45-525(5)(b), Idaho Code, subject to foreclosure must be in writing and must be accompanied by and affixed to the following notice in twelve (12) point boldface type and on a separate sheet of paper no smaller than eight and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

You may find helpful information online. One excellent source is the Department of Housing and Urban Development (HUD) website which can be found at "http://www.hud.gov/foreclosure/index.cfm". HUD also maintains on its website a list of approved housing counselors who can provide free information to assist homeowners with financial problems. Another good source of information is found at the Office of the Attorney General's website at "http://www2.state.id.us/ag/".

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option.".

(2) If during the foreclosure period described in section 45-1506, Idaho Code, any contract or agreement that involves the transfer of any interest in residential real property, as defined in section 45-525(5)(b), Idaho Code, was solicited, negotiated, or represented to the consumer in the Spanish language, the written notice to be provided to the consumer and set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

History.
I.C., § 45-1602, as added by 2008, ch. 192, § 1, p. 601; am. 2009, ch. 136, § 2, p. 417.
Compiler's Notes. The 2009 amendment, by ch. 136, in subsection (1), deleted "canary yellow or some similarly colored yellow" following "on a separate sheet of" just prior to the notice.

45-1603. Right of rescission of contract. — (1) In addition to any other legal right to cancel or rescind a contract, any person whose property is in foreclosure as described in section 45-1505, Idaho Code, has the right to cancel or rescind any and all contracts or agreements relating to such property entered into during the foreclosure period within five (5) business days of entering into such contract or agreement. Neither funds nor an interest in the property shall be transferred or transferable until the five (5) days have passed.

(2) Cancellation occurs when such person gives written notice of cancellation to all other parties to the contract. Notice of cancellation need not take any particular form and, however expressed, is effective if it indicates the intention not to be bound by the contract.

(3) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the contract or agreement, shall be conclusive proof of notice of service.

History.
I.C., § 45-1603, as added by 2008, ch. 192, § 1, p. 602.

45-1604. Exclusions. — The provisions of this chapter shall not apply to:

(1) Regulated lenders, as defined in section 28-41-301(37), Idaho Code;

(2) Any person licensed or chartered under the laws of any state or of the

United States as a bank, trust company, savings and loan association, credit union, or industrial loan company. The terms "bank," "trust company," "savings and loan association," "credit union" and "industrial loan company" shall include affiliates or wholly-owned subsidiaries of such organizations, provided that the affiliate or subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes;

(3) Mortgage lenders and mortgage brokers licensed under the Idaho residential mortgage practices act, sections 26-3101 et seq., Idaho Code;

(4) Employees and agents of the organizations specified in subsections (1), (2) and (3) of this section, when acting within the scope of such employment or agency; and

(5) Family member or members of the owner or owners of record of any interest in residential real property subject to foreclosure. For purposes of this chapter, "family member or members" means a natural person or the spouse of a natural person who is related to such owner or owners of record by blood, adoption or marriage within the second degree of consanguinity or a grandchild or the spouse of a grandchild.

History.
I.C., § 45-1604, as added by 2008, ch. 192, § 1, p. 602.

45-1605. Penalties. — In addition to any other penalty provided by law, any person who violates the provisions of this chapter shall be liable for penalties and damages in accordance with chapter 6, title 48, Idaho Code.

History.
I.C., § 45-1605, as added by 2008, ch. 192, § 1, p. 603.

CHAPTER 17

NONCONSENSUAL COMMON LAW LIENS

SECTION.
45-1704. Liens against public officers and employees.
SECTION.
45-1705. Penalties.

45-1701. Definitions.

Lien.

Magistrate erred in ruling that a lien that a contractor placed on a landowner's property after it believed that the landowner had vandalized some of its equipment was not a "nonconsensual common law lien," as the lien was: (a) not provided for by any state or federal statute, (b) not created with the landowner's consent, (c) not a court-imposed equitable or constructive lien, and (d) not of a kind commonly utilized in legitimate commercial transactions. Browning v. Griffin, 140 Idaho 598, 97 P.3d 465 (Ct. App. 2004).

45-1704. Liens against public officers and employees. — (1) Any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid unless accompanied by a specific order from a court of

competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien.

(2) A federal, state, or local official or employee whose property is affected by a claim of lien that is based on the performance or nonperformance of that official's or employee's duties may petition the district court pursuant to section 45-1703, Idaho Code, for an order striking and releasing the claim of lien. In such case, the claim of lien shall be treated as if it were a nonconsensual common law lien.

History.
I.C., § 45-1704, as added by 1996, ch. 151, § 1, p. 489; am. 2006, ch. 32, § 1, p. 95.
Compiler's Notes. The 2006 amendment, by ch. 32, added the subsection (1) designation and added subsection (2).
Section 3 of S.L. 2006, ch. 32 declared an emergency. Approved March 11, 2006.

45-1705. Penalties. — (1) Any person who offers to have recorded or filed in the office of the county clerk and recorder, or with the secretary of state, any document purporting to create a nonconsensual common law lien against real or personal property, knowing or having reason to know that such document is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, shall be liable to the owner of such real or personal property for the sum of not less than five thousand dollars ($5,000) or for actual damages caused thereby, whichever is greater, together with reasonable attorney's fees.

(2) Any grantee or other person purportedly benefited by a recorded document which creates a nonconsensual common law lien against real or personal property and is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, who willfully refuses to release such document or record upon request of the owner of the real or personal property affected shall be liable to such owner for the damages and attorney's fees provided in subsection (1) of this section.

(3) Any person who offers to have recorded or filed in the office of the county clerk and recorder, or with the secretary of state, any document, including a financing statement, purporting to create a claim of lien against any real or personal property of a federal, state or local official or employee, knowing or having reason to know that such document is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, shall be liable to the owner of such property for the damages and attorney's fees provided in subsection (1) of this section.

History.
I.C., § 45-1705, as added by 1996, ch. 151, § 1, p. 489; am. 2006, ch. 32, § 2, p. 95.
Compiler's Notes. The 2006 amendment, by ch. 32, divided the former section into present subsections (1) and (2); substituted "real or personal property" for "real property" in subsections (1) and (2); inserted "or with the secretary of state," in subsection (1); inserted "subsection (1) of" near the end of subsection (2); and added subsection (3).
Section 3 of S.L. 2006, ch. 32 declared an emergency. Approved March 11, 2006.

CHAPTER 19

STATE LIENS

SECTION.
45-1910. Effective date and transition.

45-1906. Duration of notice — Lapse — Continuation.

Relationship to Other Laws.
The five-year limitation period that governs certain state liens under this section does not apply to medical assistance liens filed under § 31-3504(4). In re Hendricks, 2010 Bankr. LEXIS 632 (Bankr. D. Idaho Mar. 1, 2010).

45-1910. Effective date and transition. — (1) This chapter shall be in full force and effect for all notices of state lien which are filed on or after July 1, 1998.

(2) Except for notices of state lien for child support delinquency, the transition period for filing notices of state lien shall begin on January 1, 1998, and end on June 30, 1998. The following conditions shall apply to notices which were filed or recorded before January 1, 1998, and to notices filed during the transition period:

(a) A notice of state lien which was recorded with a county recorder between January 1, 1993, and June 30, 1993, shall lapse on the fifth anniversary of the recording date, unless the filing agency records a notice of renewal with the recorder prior to the lapse and files a notice of transition and continuation with the secretary of state before July 1, 1998. A notice of transition and continuation shall include all of the information required by section 45-1904, Idaho Code, the date of the recording of the original notice with the county recorder, and a statement that the effectiveness of the notice is to be continued for another five (5) year period. In the event the filing agency files a notice of transition and continuation, the effectiveness of the notice of state lien shall lapse on the tenth anniversary of the original recording date, unless the filing agency files a further notice of continuation as required by section 45-1906(4), Idaho Code.

(b) A notice of state lien which was recorded with a county recorder between July 1, 1993, and December 31, 1997, will remain effective beyond June 30, 1998, only if a filing agency files a notice of transition with the secretary of state during the transition period. A notice of transition shall include all of the information required by section 45-1904, Idaho Code, and the date of the recording of the original notice with the county recorder. After a notice of transition has been filed, the effectiveness of the notice of state lien shall lapse on the fifth anniversary of the date of the recording with the county recorder, unless the filing agency files a notice of continuation as required by section 45-1906(4), Idaho Code.

(c) A notice of state lien which is first filed during the transition period shall be fully effective during the transition period only if the filing agency has filed a notice with the secretary of state and recorded a notice with the appropriate county recorder. A notice of state lien which is filed with the

secretary of state during the transition period, and which is not recorded with the county recorder, shall be fully effective on and after July 1, 1998, and shall be effective before that date against any party with actual notice after the date of filing. A notice of state lien which is recorded with a county recorder during the transition period, but not filed with the secretary of state, shall be fully effective through June 30, 1998. A notice of state lien first filed during the transition period shall lapse on the fifth anniversary of the date of filing with the secretary of state, unless the filing agency files a notice of continuation as required by section 45-1906(4), Idaho Code.

(3) The effectiveness of a notice of state lien for child support delinquency which was recorded with a county recorder shall lapse on July 1, 1998, unless a notice of transition is filed with the secretary of state on or before July 1, 1998. If a notice of transition is filed, the notice of state lien will remain effective until a notice of release is filed pursuant to section 45-1908(2), Idaho Code.

(4) A notice of state lien on record with a county recorder before July 1, 1998, and not previously lapsed or released, shall be deemed to have lapsed on July 1, 1998, and shall be null, void and of no further force and effect.

(5) A notice of state lien transitioned to the secretary of state will remain in effect on the records of the secretary of state pursuant to the procedures of section 45-1906, Idaho Code, despite having lapsed with the county recorder under the preceding section [subsection].

(6) Notwithstanding the provisions of section 45-1905, Idaho Code, a state lien which was perfected under a prior law and transitioned to perfection under this chapter without a break in perfection shall have priority as if it had been filed under this chapter on the date of its original perfection under the prior law.

History.

I.C., § 45-1910, as added by 1997, ch. 205, § 1, p. 607; am. 2012, ch. 183, § 1, p. 485.

Compiler's Notes. The 2012 amendment, by ch. 183, added subsections (4) and (5) and renumbered former subsection (4) as subsection (6).

The bracketed insertion at the end of subsection (5) was added by the compiler to supply the probable intended reference.

Section 2 of S.L. 2012, ch.183 declared an emergency. Approved March 29, 2012.

TITLE 46

MILITIA AND MILITARY AFFAIRS

CHAPTER.
1. State Militia — Organization and Staff, §§ 46-102, 46-105, 46-112, 46-114.
2. Officers and Enlisted Men, §§ 46-206, 46-208, 46-209, 46-214, 46-216, 46-225.
3. Equipment and Allowances, §§ 46-302 — 46-307, 46-309, 46-310.
4. Immunities and Privileges, §§ 46-407, 46-409.
6. Martial Law and Active Duty, §§ 46-601, 46-603, 46-609, 46-610.
8. Miscellaneous and General Provisions, §§ 46-804 — 46-806.
10. State Disaster Preparedness Act, §§ 46-1001 — 46-1004, 46-1006 — 46-1009, 46-1013, 46-1017, 46-1019, 46-1021, 46-1022, 46-1025 — 46-1027.
11. Code of Military Justice, § 46-1103.
12. Statewide Communications Interoperability, §§ 46-1201 — 46-1212.

CHAPTER 1

STATE MILITIA — ORGANIZATION AND STAFF

SECTION.
46-102. State militia — Membership — Exemptions.
46-105. Appointment and enlistment of female citizens. [Repealed.]
46-112. Duties of the adjutant general.
46-114. Staff officers — Aides-de-camp. [Repealed.]

46-102. State militia — Membership — Exemptions. — The militia of the state of Idaho shall consist of all able-bodied citizens of the state, and all other able-bodied persons who have or shall have declared their intentions to become citizens of the United States and are residents of the state of Idaho; who shall be more than eighteen (18) years of age, and except as hereinafter provided, not more than forty-five (45) years of age, subject to the following exemptions:

1. Persons exempted from service in the militia by the constitution of the state of Idaho and by the laws of the United States from enlistment or draft into the regular army. Provided, however, that voluntary enlistments, with the written consent of the parent or guardian of any able-bodied citizen over the age of sixteen (16) years may be accepted and such enlistees inducted into the organized militia of the state of Idaho in time of war, and as classified in section 46-103, Idaho Code, except that the provision for the enlistment of able-bodied citizens under the age of eighteen (18) years will terminate six (6) months following the declaration of peace.

History.

1927, ch. 261, § 2, p. 510; I.C.A., § 45-102; am. 1943, ch. 46, § 1, p. 92; am. 2008, ch. 126, § 1, p. 346.

Compiler's Notes. The 2008 amendment, by ch. 126, in the introductory paragraph, deleted "male" following the first occurrence of "able-bodied," and substituted "able-bodied persons" for "able-bodied males"; and in subsection 1., twice deleted "male" following "able-bodied."

This section was enacted and amended with a subsection 1., but no subsection 2.

46-105. Appointment and enlistment of female citizens. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 8, p. 510; I.C.A., § 45-105; am. 1957, ch. 174, § 4, p. 312; am. 1994, ch. 343, § 1, p. 1079, was repealed by S.L. 2008, ch. 126, § 2.

46-112. Duties of the adjutant general. — The duties of the adjutant general are:

(1) To be chief of staff to the commander-in-chief and administrative head of the military division of the office of governor.

(2) To be custodian of all military records and property of the national guard and organized militia.

(3) To publish and distribute all orders from the governor as commander-in-chief and perform such other duties as the governor may direct.

(4) Subject to the provisions of section 67-5303(j), Idaho Code, to employ such clerical and other personnel as may be required in the military division of the office of the governor.

(5) To pay the members of the national guard when such members are to be paid from state funds.

(6) To attend to the care, maintenance, repair and safekeeping of all federal equipment issued to the state of Idaho for the use of the national guard.

(7) To be custodian of the seal of the office of adjutant general and to deliver the same to his successor.

(8) To organize such units and recruit such personnel, with the consent of the governor, as may be authorized by federal law and regulations, and as may be required for the security of the state of Idaho.

(9) To supervise the training of the national guard and the organized militia.

(10) To make such returns and reports as may be required by the federal laws and regulations.

(11) To coordinate the planning and execution of state activities pertaining to the inauguration of the governor of the state of Idaho and the other elected state executive officers.

(12) To provide or secure all plans and specifications for, to let all contracts for, and to have charge of and supervision over the construction, expansion, rehabilitation, conversion, maintenance and repair, procurement, and the collection of fees for military and nonmilitary facilities and operations within the military division.

History.
1927, ch. 261, § 16, p. 510; I.C.A., § 45-112; am. 1957, ch. 174, § 11, p. 312; am. 1974, ch. 22, § 11, p. 592; am. 2001, ch. 248, § 1, p. 900; am. 2011, ch. 53, § 1, p. 117.

Compiler's Notes. The 2011 amendment, by ch. 53, added subsection (12).

46-114. Staff officers — Aides-de-camp. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 19, p. 510; am. 1931, ch. 186, § 3, p. 310; I.C.A., § 45-114; am. 1950 (E.S.), ch. 24, § 1, p. 35; am. 1957, ch. 174, § 13, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

CHAPTER 2

OFFICERS AND ENLISTED MEN

SECTION.
46-206. Retirement — Time of service.
46-208. Arrest of officers and enlisted personnel. [Repealed.]
46-209. Disobedience of orders — Trespass upon military property — Prohibition and abatement of nuisances. [Repealed.]
SECTION.
46-214. Retirement of enlisted personnel. [Repealed.]
46-216. Leave of absence from regular duties for military duty.
46-225. Vacation, sick leave, bonus, health insurance and advancement unaffected by leave of absence.

46-206. Retirement — Time of service. — Upon request, any commissioned officer, warrant officer or enlisted member of the national guard of Idaho who has a total military service in the armed forces of the United States of twenty (20) years may be placed on the retirement list. In the discretion of the adjutant general, any member may be advanced one (1) grade prior to retirement. Promotions under this section shall be honorary.

History.
1927, ch. 261, § 25, p. 510; I.C.A., § 45-206; am. 1957, ch. 174, § 20, p. 312; am. 1978, ch. 54, § 2, p. 101; am. 2007, ch. 109, § 1, p. 315; am. 2008, ch. 27, § 10, p. 51.

Compiler's Notes. The 2007 amendment, by ch. 109, rewrote this section which formerly read: "Any officer of the national guard who loses his federal recognition because of mandatory retirement may be advanced one (1) grade and may be placed upon the retired list by order of the governor as commander-in-chief. Any commissioned officer who has served as an officer in the national guard of Idaho for a period of twenty (20) years, upon his request, may be advanced one (1) grade, and placed upon the retired list. Any commissioned officer who has a total service in the armed forces of the United States and in the national guard of Idaho of fifteen (15) years, may upon his request be advanced one (1) grade and retired."

The 2008 amendment, by ch. 27, deleted "of officers" following "Retirement" in the section catchline.

46-208. Arrest of officers and enlisted personnel. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 27, p. 510; I.C.A., § 45-208; am. 1957, ch. 174, § 22, p. 312; am. 1978, ch. 54, § 3, p. 101, was repealed by S.L. 2008, ch. 126, § 2.

46-209. Disobedience of orders — Trespass upon military property — Prohibition and abatement of nuisances. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 28, p. 510; I.C.A., § 45-209; am. 1957, ch. 174, § 23, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

46-214. Retirement of enlisted personnel. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 76, p. 510; I.C.A., § 45-214; am. 1957, ch. 174, § 28, p. 312, was repealed by S.L. 2007, ch. 109, § 2. See § 46-206.

46-216. Leave of absence from regular duties for military duty. — All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United

States, shall be entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, time, or efficiency rating during which they shall be engaged in military duty ordered or authorized under the provisions of law. State employees assigned to "uncommon tours of duty" shall have the above-referenced one hundred twenty (120) hours of leave prorated proportionally to the number of hours in their regularly scheduled biweekly pay period. Administration of paid leave for "uncommon tours of duty" shall be consistent with the federal office of personnel management (OPM) definitions and pay administration guidance for similarly situated federal employees.

History.

1927, ch. 261, § 34, p. 510; I.C.A., § 45-216; am. 1957, ch. 174, § 30, p. 312; am. 2006, ch. 171, § 1, p. 530; am. 2008, ch. 126, § 3, p. 347; am. 2009, ch. 44, § 1, p. 125.

Compiler's Notes. The 2006 amendment, by ch. 171, rewrote the section which formerly read: "**Leave of absence from regular duties for field training — Exceptions.** All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States, shall be entitled to leave of absence from their respective duties without loss of pay, time, or efficiency rating on all days during which they shall be engaged in field training ordered or authorized under the provisions of the national defense act; provided that this shall not apply to any period of time spent in active service of the United States, except that a period of fifteen (15) days or less in reserve training in any one (1) calendar year shall not be considered time spent in active service of the United States, for the purposes of this act."

The 2008 amendment, by ch. 126, substituted "one hundred twenty (120) hours" for "fifteen (15) days."

The 2009 amendment, by ch. 44, added the last two sentences.

46-225. Vacation, sick leave, bonus, health insurance and advancement unaffected by leave of absence. — Such absence for military training shall not affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his employment normally to be anticipated in his particular position. All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States shall also be entitled to their existing medical benefits for the first thirty (30) days of a deployment ordered or authorized under the provisions of the national defense act, and such entitlement shall not decrease any existing accrued leave balances.

History.

1955, ch. 202, § 2, p. 434; am. 2006, ch. 172, § 1, p. 531.

Compiler's Notes. The 2006 amendment, by ch. 172, inserted "health insurance" in the section heading and added the last sentence.

Section 2 of S.L. 2006, ch. 172 declared an emergency. Approved March 23, 2006.

CHAPTER 3

EQUIPMENT AND ALLOWANCES

SECTION.
46-302. Equipment for enlisted personnel — Punishment for unlawful use. [Repealed.]
46-303. Personal responsibility for money and property. [Repealed.]
46-304. Disposal of equipment — Unauthorized use of insignia — Penalties. [Repealed.]
46-305. Lost or damaged equipment — Liability of responsible officer. [Repealed.]
46-306. Loss or damage to property — Liabil-

SECTION.
ity of responsible enlisted person. [Repealed.]
46-307. Uniforms prescribed. [Repealed.]
46-309. Allowance for military expenses. [Repealed.]
SECTION.
46-310. Officers' annual allowance. [Repealed.]

46-302. Equipment for enlisted personnel — Punishment for unlawful use. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 42, p. 510; I.C.A., § 45-302; am. 1957, ch. 174, § 39, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

46-303. Personal responsibility for money and property. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 74, p. 510; I.C.A., § 45-303; am. 1950 (E. S.), ch. 24, § 3, p. 35; am. 1957, ch. 174, § 40, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

46-304. Disposal of equipment — Unauthorized use of insignia — Penalties. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 77, p. 510; I.C.A., § 45-304; am. 1957, ch. 174, § 41, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

46-305. Lost or damaged equipment — Liability of responsible officer. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 43, p. 510; I.C.A., § 45-305; am. 1950 (E. S.), ch. 24, § 4, p. 35; am. 1957, ch. 174, § 42, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

46-306. Loss or damage to property — Liability of responsible enlisted person. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 44, p. 510; I.C.A., § 45-306; am. 1957, ch. 174, § 43, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

46-307. Uniforms prescribed. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 45, p. 510; I.C.A., § 45-307; am. 1957, ch. 174, § 44, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

46-309. Allowance for military expenses. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 46, p. 510; I.C.A., § 45-309; am. 1957, ch. 174, § 46, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

46-310. Officers' annual allowance. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 47, p. 510; I.C.A., § 45-310; am. 1957, ch. 174, § 47, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

CHAPTER 4

IMMUNITIES AND PRIVILEGES

SECTION.
46-407. Reemployment rights.
SECTION.
46-409. The militia civil relief act.

46-407. Reemployment rights. — (a) Any member of the Idaho national guard who is ordered to duty by the governor, or any Idaho employee who is a member of the national guard of another state and who is called into active service by the governor of that state, and who at the time of such order to duty is employed by any employer other than the United States government, shall be entitled to reemployment as set forth in section 46-409, Idaho Code.

(b) If the member is still qualified to perform the duties of the position he held at the time of the order to duty, he shall be restored by the employer or the employer's successor in interest to that position or one of like seniority, status and pay. If the member is not qualified to perform the duties of such position by reason of disability sustained during the period of duty, but is qualified to perform the duties of any other positions in the employ of the employer, then the employer must offer the member that position which he is qualified to perform which is most similar to his former position in seniority, status and pay.

(c) Any person who is reemployed under this section shall not be discharged without cause within one (1) year after such reemployment.

(d) If any employer fails or refuses to comply with this section, the district court in the county in which the member was employed shall have the power, upon petition by the member, to compel the employer to comply with this section and to compensate the member for lost wages and benefits, for costs of the action, and for reasonable attorney's fees. The court shall order a speedy hearing in any such case and advance it on the calendar.

History.
I.C., § 46-407, as added by 1984, ch. 139, § 1, p. 327; am. 2007, ch. 276, § 1, p. 805.

Compiler's Notes. The 2007 amendment, by ch. 276, in subsection (a), inserted "or any Idaho employee who is a member of the national guard of another state and who is called into active service by the governor of that state," and substituted "as set forth in section 46-609, Idaho Code" for subsections (a)(1) through (a)(5), which read:

"(1) The position in which he was employed was not a temporary position;

"(2) His release from duty was under honorable conditions;

"(3) He remains physically qualified for employment;

"(4) The period of duty did not exceed one (1) year; and

"(5) Application for reemployment is made within thirty (30) days subsequent to release from duty."

46-409. The militia civil relief act. — (1) As used in this section, the following terms have the following meanings:

(a) "Active member" means any member of the air or army national guard who is called or ordered by the governor for thirty (30) consecutive days or more to state active duty, or to duty other than for training under title 32 U.S.C., or ordered by competent federal authority into active federal service under title 10 U.S.C. for thirty (30) consecutive days or more.

(b) "Be called or ordered by the governor" means to be called or ordered by

the governor for thirty (30) consecutive days or more to state active duty or to duty other than for training under title 32 U.S.C.

(c) "Duty other than for training" means any state active duty or title 32 U.S.C. duty other than training unless training is required as part of thirty (30) days of the consecutive duty upon the call or order of the governor, or active federal service under title 10 U.S.C. Duty other than for training does not include weekend drill, annual training (generally fifteen (15) days) as part of normal national guard service, and does not include attendance at military schools unless such attendance is required as part of, or occurs in conjunction with thirty (30) days of consecutive duty upon the call or order of the governor, or by order of competent federal authority.

(d) "Employee" means any person employed by a public or private employer.

(e) "Soldiers' and sailors' civil relief act (SSCRA)" means the provisions of 50 App. U.S.C. section 501 et seq. which protects active military service members.

(f) "State active duty" means any active duty performed for thirty (30) consecutive days or more by an active member of the national guard in accordance with this title when called or ordered by the governor.

(g) "Uniform services employment and reemployment rights act of 1994 (USERRA)" means the provisions of 38 U.S.C. section 4301 et seq., which gives employees who leave a civilian job to perform military service the right to return to the civilian job held before entering military service with the rights to seniority, to purchase insurance coverage and purchase retirement credit.

(2) Whenever any active member of the national guard in time of war, armed conflict, or emergency proclaimed by a governor or by the president of the United States, shall be called or ordered by a governor to state active duty for a period of thirty (30) consecutive days or more, or to duty other than for training pursuant to title 32 U.S.C., the provision as then in effect of the soldiers' and sailors' civil relief act, 50 App. U.S.C. section 501 et seq., and the uniform services employment and reemployment rights act, 38 U.S.C. section 4301 et seq., shall apply.

(3) With reference to 50 App. U.S.C. section 581, the adjutant general or his designee shall be responsible to execute certificates of service referred to therein.

History.

I.C., § 46-409, as added by 2003, ch. 251, § 21, p. 650; am. 2004, ch. 59, § 1, p. 277; am. 2007, ch. 276, § 2, p. 805.

Compiler's Notes. Section 2 of S.L. 2004, ch. 59 declared an emergency. Approved March 16, 2004.

The 2007 amendment, by ch. 276, in subsection (1)(a), deleted "Idaho" preceding "air or army national guard"; in subsections (1)(f) and (2), deleted "Idaho" preceding "national guard"; and in subsection (2), twice substituted "a governor" for "the governor."

CHAPTER 6

MARTIAL LAW AND ACTIVE DUTY

SECTION.
46-601. Authority of governor.
46-603. Active duty — Idaho code of military justice in force — Court-martial — Additional jurisdiction. [Repealed.]
46-609. Officers and enlisted personnel on special duty — Compensation and allowances.
46-610. Military maneuvers and camps — Compensation. [Repealed.]

46-601. Authority of governor. — (1) The governor shall have the power in the event of a state of extreme emergency to order into the active service of the state, the national guard, or any part thereof, and the organized militia, or any part thereof, or both as he may deem proper.

"State of extreme emergency" means: (a) the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the state, or any part thereof, caused by an enemy attack or threatened attack; or (b) the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the state, or any part thereof, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, insurrection, breach of the peace, which conditions by reason of their magnitude are or are likely to be beyond the control of the services, personnel, equipment and facilities of any county, any city, or any city and county.

(2) During a period of a state of extreme emergency, the governor shall have complete authority over all agencies of the state government, including all separate boards and commissions, and the right to exercise within the area or regions wherein the state of extreme emergency exists all police power vested in the state by the constitution and the laws of the state of Idaho. In the exercise thereof he is authorized to promulgate, issue and enforce rules, regulations and orders which he considers necessary for the protection of life and property. Such rules, regulations and orders shall, whenever practicable, be prepared in advance of extreme emergency and the governor shall cause widespread publicity and notice to be given of such rules, regulations and orders. Rules, regulations and orders issued under the authority of this section and prepared in advance of a state of extreme emergency shall not become operative until the governor proclaims a state of extreme emergency. Such rules, regulations and orders shall be in writing and shall take effect upon their issuance. They shall be filed in the office of the secretary of state as soon as possible after their issuance. A copy of such rules, regulations and orders shall likewise be filed in the office of the county clerk of each county, any portion of which is included within the area wherein a state of extreme emergency has been proclaimed. Whenever the state of extreme emergency has been ended by either the expiration of the period for which it was proclaimed or the need for said state of extreme emergency has ceased, the governor shall declare the period of the state of extreme emergency to be at an end.

(3) During the continuance of any proclaimed state of extreme emergency, insurrection or martial law, neither the governor nor any agency of

any governmental entity or political subdivision of the state shall impose additional restrictions on the lawful possession, transfer, sale, transport, storage, display or use of firearms or ammunition.

History.
1927, ch. 261, § 4, p. 510; I.C.A., § 45-601; am. 1957, ch. 174, § 58, p. 312; am. 2009, ch. 215, § 1, p. 674.
Compiler's Notes. The 2009 amendment, by ch. 215, redesignated former subsections (a) and (b) as subsections (1) and (2), respectively, and changed the designations in the second paragraph of subsection (1); and added subsection (3).

46-603. Active duty — Idaho code of military justice in force — Court-martial — Additional jurisdiction. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 6, p. 510; I.C.A., § 45-603; am. 1957, ch. 174, § 60, p. 312; am. 1978, ch. 54, § 6, p. 101, was repealed by S.L. 2008, ch. 126, § 2.

46-609. Officers and enlisted personnel on special duty — Compensation and allowances. — Officers and enlisted personnel of the national guard may be ordered upon special duty at the direction of the adjutant general, if with their consent, for a period not to exceed seventy-two (72) hours without the approval of the governor, or at the direction of the governor as commander-in-chief, with or without their consent. They shall receive the pay and allowances provided in section 46-605, Idaho Code, during the time they may continue upon duty under such order.

History.
1927, ch. 261, § 32, p. 510; I.C.A., § 45-609; am. 1957, ch. 174, § 66, p. 312; am. 1998, ch. 98, § 1, p. 347; am. 2007, ch. 275, § 1, p. 805.
Compiler's Notes. The 2007 amendment, by ch. 275, rewrote the section, which formerly read: "Commissioned officers and enlisted personnel of the national guard may be ordered upon special duty at the direction of the governor as commander-in-chief, with or without their consent, and if with their consent, notwithstanding the provisions of sections 46-605 and 46-607, Idaho Code, such duty may be without any pay or allowances, but if without consent, they shall receive the same pay and allowances as prescribed in section 46-605, Idaho Code, during the time they may continue upon duty under such order."

46-610. Military maneuvers and camps — Compensation. [Repealed.]

Compiler's Notes. This section, which comprised 1927, ch. 261, § 75, p. 510; I.C.A., § 45-610; am. 1957, ch. 174, § 67, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

CHAPTER 8

MISCELLANEOUS AND GENERAL PROVISIONS

SECTION.
46-804. Military division rules.
46-805. Youth challenge program. [Null and void, effective July 1, 2015.]
SECTION.
46-806. Military division support fund.

46-804. Military division rules. — The military division shall be authorized to promulgate, implement and enforce rules for the administration of the military division and to implement the requirements of this title.

The adjutant general shall be responsible for the enforcement of all rules adopted by the military division. All rulemaking proceedings and hearings of the military division shall be governed by the provisions of chapter 52, title 67, Idaho Code.

History.
I.C., § 46-804, as added by 2008, ch. 125, § 1, p. 346.

46-805. Youth challenge program. [Null and void, effective July 1, 2015.] —

(1)(a) There is hereby established the Idaho youth challenge program, a multi-phased youth intervention program. The program will provide, among other things, a structured, disciplined residential phase of at least twenty-two (22) weeks focusing on education and practical life skills and a post-residential phase of at least twelve (12) months involving skilled and trained mentors supporting graduates and engaged in positive and durable placement of graduates. The youth challenge program shall be focused on assisting participants in achieving a high school diploma or obtaining a general equivalency diploma (GED) and helping to ensure that participants become productive members of society.

(b) The program shall be eligible to receive and expend any moneys provided to the program including, but not limited to, private contributions, federal funds and state alternative secondary school funding. In the event that moneys for any fiscal year are inadequate to fund the youth challenge program, the program shall be discontinued. The decision to discontinue the program due to inadequate funding shall be made by the legislature and the governor in a joint letter provided to the adjutant general and signed by the governor, the president pro tempore of the senate and the speaker of the house of representatives.

(2) The youth challenge program shall be administered by the state adjutant general in conjunction with:

(a) The board of trustees of an appropriate school district of this state; or

(b) A governing board, the members of which shall be appointed by the governor. The size of such governing board and qualifications and terms of board members shall be provided for in rule authorized by this section.

(3) The program and all program participants shall be governed by all applicable laws, regulations and guidelines including, but not limited to, 32 U.S.C. section 509.

(4)(a) In order to be eligible to participate in the program, applicants shall meet the criteria established by the adjutant general in administrative rule.

(b) Applicants shall be selected for the program by the youth challenge program board of admissions. Such board shall be appointed by the adjutant general. Qualifications for board membership, length of board terms, size of the board and other necessary provisions shall be established by the adjutant general in administrative rule.

(5) The adjutant general is authorized to enter into contracts and to promulgate rules to implement the provisions of this section.

(6) The school district where the youth challenge program is located may take steps to have the youth challenge program be considered and designated as an alternative secondary school.

History.
I.C., § 46-805, as added by 2011, ch. 322, § 1, p. 938; am. 2012, ch. 234, § 1, p. 651.

Compiler's Notes. Section 2 of S.L. 2011, ch. 322 declares and emergency. Approved April 13, 2011.

Section 2 of S.L. 2011, ch. 322, as amended by S.L. 2012, ch. 234, provided "The provisions of this act shall be null, void and of no force and effect on and after July 1, 2015."

The 2012 amendment, by ch. 234, inserted "federal funds and state alternative secondary school funding" in paragraph (1)(b) and rewrote subsection (6), which formerly read: "The provisions of this section shall be null and void and of no force and effect on and after July 1, 2014."

46-806. Military division support fund. — (1) There is hereby created in the state treasury the military division support fund. Moneys in the fund shall be invested as provided in section 67-1210, Idaho Code, and interest earned on investment of idle moneys in the fund shall be credited to the fund. Moneys in the fund shall be continually appropriated.

(2) The adjutant general, or his designee, is hereby authorized to also accept by devise, gift or otherwise and hold as trustee, for the benefit and use of the military division or any part thereof, any property, real or personal. The adjutant general, or his designee, shall be empowered to collect, receive and recover the rents, incomes and issues from the property; and to sell, divest, exchange or transact such property at fair market value; and to otherwise expend fund assets as provided by the terms of the devise or gift, or if not so provided, to expend them for the benefit and use of the military division.

(3) The board of examiners shall have oversight of this fund. The adjutant general shall provide a public annual report, due on the first day of July each year, to the board of examiners disclosing the financial status of the fund, listing all new gifts, bequests, donations and contributions during the prior year as well as all sales or disposals of properties or assets from the fund and every disbursement or other use of the fund.

(a) The board of examiners shall approve all gifts of real property before acceptance by the adjutant general.

(b) The board of examiners shall approve all gifts valued at two hundred fifty thousand dollars ($250,000) or more before acceptance by the adjutant general.

(c) The adjutant general may, on his or her own initiative, request review and approval by the board of examiners for any other gift prior to acceptance.

(4) The adjutant general may assign military division employees to manage the operation of the fund; and the adjutant general shall request the office of the attorney general to prepare any legal documents required under the provisions of this section.

History.
I.C., § 46-806, as added by 2012, ch. 23, § 1, p. 77.

Cross Reference. Adjutant general, § 46-111.

Attorney general, § 67-1401 et seq.

Board of examiners, § 67-2001 et seq.

CHAPTER 10

STATE DISASTER PREPAREDNESS ACT

SECTION.
46-1001. Short title.
46-1002. Definitions.
46-1003. Policy and purposes.
46-1004. Bureau of homeland security created.
46-1006. Powers and duties of chief and bureau.
46-1007. Limitations.
46-1008. The governor and disaster emergencies.
46-1009. Local and intergovernmental disaster agencies and services.
SECTION.
46-1013. Communications.
46-1017. Immunity.
46-1019. Emergency response. [Repealed.]
46-1021. Definitions.
46-1022. Local governments may adopt floodplain zoning ordinances.
46-1025. Federal funds to political subdivisions.
46-1026. Definitions.
46-1027. Military division — Bureau of homeland security — Additional powers and duties.

46-1001. Short title. — This act shall be cited as the "Idaho Disaster Preparedness Act of 1975, amended by the Idaho Homeland Security Act of 2004."

History.
I.C., § 46-1001 as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 3, p. 268.

Compiler's Notes. Section 2 of S.L. 2004, ch. 58 is compiled as § 39-7104.

46-1002. Definitions. — As used in this act:

(1) "Bureau" means the bureau of homeland security, military division of the office of the governor.

(2) "Adjutant general" means the administrative head of the military division of the office of the governor.

(3) "Disaster" means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including but not limited to fire, flood, earthquake, windstorm, wave action, volcanic activity, explosion, riot, or hostile military or paramilitary action and including acts of terrorism.

(4) "Emergency" means occurrence or imminent threat of a disaster or condition threatening life or property which requires state emergency assistance to supplement local efforts to save lives and protect property or to avert or lessen the threat of a disaster.

(5) "Political subdivision" means any county, city, district, or other unit of state or local government.

(6) "Militia" means all members of the Idaho army and air national guard in the service of the state.

(7) "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress and preserving life of, and removing survivors from the site of a disaster, emergency or hazard to a place of safety in case of lost, stranded, entrapped, or injured persons.

(8) "Disaster emergency account" means the account created under this act for the purpose of paying obligations and expenses incurred by the state of Idaho during a declared state of disaster emergency.

(9) "Bureau of hazardous materials" means the former bureau of hazardous materials which is now a part of the bureau of homeland security in the military division of the office of the governor.

History.
I.C., § 46-1002, as added by 1975, ch. 212, § 2, p. 584; am. 1981, ch. 320, § 1, p. 666; am. 1997, ch. 121, § 10, p. 357; am. 2004, ch. 58, § 4, p. 268.

46-1003. Policy and purposes. — It is the policy of this state to plan and prepare for disasters and emergencies resulting from natural or man-made causes, enemy attack, terrorism, sabotage or other hostile action, and to implement this policy, it is found necessary:

(1) To create a bureau of homeland security, to authorize the creation of local organizations for disaster preparedness in the political subdivisions of the state, and to authorize the state and political subdivisions to execute agreements and to cooperate with the federal government and the governments of other states.

(2) To prevent and reduce damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action.

(3) To prepare assistance for prompt and efficient search, rescue, care, and treatment of persons injured, victimized or threatened by disaster.

(4) To provide for rapid and orderly restoration and rehabilitation of persons and property affected by disasters.

(5) To prescribe the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to and recovery from disasters.

(6) To authorize and encourage cooperation in disaster prevention, preparedness, response and recovery.

(7) To provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by all state agencies, political subdivisions, and interstate, federal-state and Canadian activities in which the state and its political subdivisions may participate.

(8) To provide a disaster management system embodying all aspects of predisaster preparedness and postdisaster response.

(9) To provide for the payment of obligations and expenses incurred by the state of Idaho through the bureau of homeland security during a declared state of disaster emergency.

History.
I.C., § 46-1003, as added by 1975, ch. 212, § 2, p. 584; am. 1981, ch. 320, § 2, p. 666; am. 2004, ch. 58, § 5, p. 268.

46-1004. Bureau of homeland security created. — Within the military division of the office of governor, a bureau of homeland security is established.

History.
I.C., § 46-1004 as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 6, p. 268.

Compiler's Notes. Section 7 of S.L. 2004, ch. 58 is compiled as § 46-1006.

46-1006. Powers and duties of chief and bureau. — (1) In all matters of disaster services, the adjutant general shall represent the governor and shall on behalf of the governor, coordinate the activities of all of the state agencies in disaster services. The bureau shall have a coordinating officer and other professional, technical, secretarial and clerical employees necessary for the performance of its functions.

(2) The bureau shall prepare, maintain and update a state disaster plan based on the principle of self help at each level of government. The plan may provide for:

(a) Prevention and minimization of injury and damage caused by disaster;

(b) Prompt and effective response to disaster;

(c) Emergency relief;

(d) Identification of areas particularly vulnerable to disasters;

(e) Assistance to local officials in designing local emergency action plans;

(f) Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from disaster;

(g) Preparation and distribution to the appropriate state and local officials of catalogs of federal, state and private assistance programs;

(h) Assistance to local officials in designing plans for search, rescue, and recovery of persons lost, entrapped, victimized, or threatened by disaster;

(i) Organization of manpower and chains of command;

(j) Coordination of federal, state, and local disaster activities;

(k) Coordination of the state disaster plan with the disaster plans of the federal government.

(3) The bureau shall participate in the development and revision of local and intergovernmental disaster plans. To this end it may employ or otherwise secure the services of professional and technical personnel to provide expert assistance to political subdivisions, their disaster agencies, and intergovernmental planning and disaster agencies. This personnel shall consult with subdivisions and agencies and shall make field examinations of the areas, circumstances, and conditions to which particular local and intergovernmental disaster plans are intended to apply.

(4) In preparing and maintaining the state disaster plan, the bureau shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and intergovernmental agencies, the bureau shall encourage them also to seek advice from these sources.

(5) The state disaster plan or any part thereof may be incorporated in rules of the bureau promulgated subject to chapter 52, title 67, Idaho Code.

(6) The bureau shall:

(a) Promulgate standards and criteria for local and intergovernmental disaster plans;

(b) Periodically review local and intergovernmental disaster plans;

(c) Assist political subdivisions, their disaster agencies, and intergovernmental disaster agencies to establish and operate training programs and programs of public information;

(d) Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(e) Prepare executive orders and proclamations for issuance by the governor, as necessary or appropriate in coping with disasters;

(f) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this act and in implementing programs for disaster prevention, preparation, response, and recovery;

(g) Maintain a register of search and rescue organizations, units, teams, or individuals operating within the state;

(h) Assist search and rescue units to accomplish standards for equipment, training and proficiency;

(i) Coordinate search and rescue of lost aircraft and airmen pursuant to section 21-114, Idaho Code, with aerial search operations coordinated by the Idaho transportation department, division of aeronautics;

(j) In addition to disaster prevention measures as included in the state, local, and intergovernmental disaster plans, the bureau shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. The governor from time to time may make recommendations to the legislature, local governments and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters; and

(k) Not limit the powers and duties of the department of transportation, division of aeronautics, as provided by sections 21-114 and 21-118, Idaho Code.

History.

I.C., § 46-1006, as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 7, p. 268; am. 2005, ch. 27, § 2, p. 133.

Compiler's Notes. Sections 6 and 8 of S.L. 2004, ch. 58 are compiled as §§ 46-1004 and 46-1008, respectively.

Sections 1 and 3 of S.L. 2005, ch. 27 are compiled as §§ 21-114 and 46-1009, respectively.

46-1007. Limitations. — Nothing in this act shall be construed to:

(1) Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) Interfere with dissemination of news or comment on public affairs;

(3) Affect the jurisdiction or responsibilities of police forces, fire fighting forces, local emergency medical service (EMS) agencies licensed by the state department of health and welfare EMS bureau, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but state, local, and intergovernmental disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or

(4) Limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution or statutes of this state independent of or in conjunction with any provisions of this act.

History.
I.C., § 46-1007, as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 373, § 1, p. 1114.

Compiler's Notes. Section 2 of S.L. 2004, ch. 373 is compiled as § 46-1009.

46-1008. The governor and disaster emergencies. — (1) Under this act, the governor may issue executive orders, proclamations and amend or rescind them. Executive orders and proclamations have the force and effect of law.

(2) A disaster emergency shall be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the governor finds that the threat or danger has passed, or the disaster has been dealt with to the extent that emergency conditions no longer exist, and when either or both of these events occur, the governor shall terminate the state of disaster emergency by executive order or proclamation; provided, however, that no state of disaster emergency may continue for longer than thirty (30) days unless the governor finds that it should be continued for another thirty (30) days or any part thereof. The legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened, the area subject to the proclamation, and the conditions which are causing the disaster. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and unless the circumstances attendant upon the disaster prevent or impede, be promptly filed with the bureau of homeland security, the office of the secretary of state and the office of the recorder of each county where the state of disaster emergency applies.

(3) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local and intergovernmental disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this act or any other provision of law relating to disaster emergencies.

(4) During the continuance of any state of disaster emergency the governor is commander-in-chief of the militia and may assume command of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing herein restricts his authority to do so by orders issued at the time of the disaster emergency.

(5) In addition to any other powers conferred upon the governor by law, he may:

(a) Suspend the provisions of any regulations prescribing the procedures for conduct of public business that would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(b) Utilize all resources of the state, including, but not limited to, those sums in the disaster emergency account as he shall deem necessary to pay obligations and expenses incurred during a declared state of disaster emergency;

(c) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(d) Subject to any applicable requirements for compensation under section 46-1012, Idaho Code, commandeer or utilize any private property, real or personal, if he finds this necessary to cope with the disaster emergency;

(e) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(f) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(g) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(h) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, explosives, and combustibles;

(i) Make provision for the availability and use of temporary emergency housing.

(6) Whenever an emergency or a disaster has been declared to exist in Idaho by the president under the provisions of the disaster relief act of 1974 (public law 93-288, 42 U.S.C. 5121), as amended, the governor may:

(a) Enter into agreements with the federal government for the sharing of disaster recovery expenses involving public facilities;

(b) Require as a condition of state assistance that a local taxing district be responsible for paying forty percent (40%) of the nonfederal share of costs incurred by the local taxing district which have been determined to be eligible for reimbursement by the federal government, provided that the total local share of eligible costs for a taxing district shall not exceed ten percent (10%) of the taxing district's tax charges authorized by section 63-802, Idaho Code;

(c) Obligate the state to pay the balance of the nonfederal share of eligible costs within local taxing entities qualifying for federal assistance; and

(d) Enter into agreements with the federal government for the sharing of disaster assistance expenses to include individual and family grant programs.

(7) During the continuance of any state of disaster emergency, neither the governor nor any agency of any governmental entity or political subdivision of the state shall impose restrictions on the lawful possession, transfer, sale, transport, storage, display or use of firearms or ammunition.

History.

I.C., § 46-1008, as added by 1975, ch. 212, § 2, p. 584; am. 1981, ch. 89, § 1, p. 123; am. 1981, ch. 320, § 4, p. 666; am. 1984, ch. 4, § 1, p. 7; am. 1996, ch. 208, § 11, p. ; am. 1996, ch. 322, § 45, p. 1029; am. 1997, ch. 117, § 7, p. 298; am. 2004, ch. 58, § 8, p. 268; am. 2006, ch. 264, § 1, p. 818.

Compiler's Notes. Sections 7 and 9 of S.L. 2004, ch. 58 are compiled as §§ 46-1006 and 46-1013, respectively.

The 2006 amendment, by ch. 264, in subsection (5)(h), deleted "firearms" preceding "explosives"; and added subsection (7).

46-1009. Local and intergovernmental disaster agencies and services. — (1) Each county within this state shall be within the jurisdiction of and served by the bureau and by a county or intergovernmental agency responsible for disaster preparedness and coordination of response.

(2) Each county shall maintain a disaster agency or participate in an intergovernmental disaster agency which, except as otherwise provided under this act, has jurisdiction over and serves the entire county, or shall have a liaison officer appointed by the county commissioners designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response and recovery.

(3) The chairman of the board of county commissioners of each county in the state shall notify the bureau of the manner in which the county is providing or securing disaster planning and emergency services. The chairman shall identify the person who heads the agency or acts in the capacity of liaison from which the service is obtained, and furnish additional information relating thereto as the bureau requires.

(4) Each county and/or intergovernmental agency shall prepare and keep current a local or intergovernmental disaster emergency plan for its area.

(5) The county or intergovernmental disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command.

History.
I.C., § 46-1009, as added by 1975, ch. 212, § 2, p. 584; am. 2003, ch. 132, § 1, p. 385; am. 2004, ch. 373, § 2, p. 1114; am. 2005, ch. 27, § 3, p. 133; am. 2008, ch. 39, § 1, p. 93.

Compiler's Notes. Section 1 of S.L. 2004, ch. 373 is compiled as § 46-1007.

Section 2 of S.L. 2005, ch. 27 is compiled as § 46-1006.

The 2008 amendment, by ch. 39, deleted subsections (6) through (10), which pertained to duties of the sheriff, search and rescue operations, and rescue of injured or entrapped persons, respectively.

46-1013. Communications. — The bureau shall ascertain what means exist for rapid and efficient communications in times of disaster emergencies. The bureau shall consider the desirability of supplementing these communication resources or of integrating them into a comprehensive state or state-federal telecommunications or other communication system or network. The bureau shall make recommendations to the governor as appropriate.

History.
I.C., § 46-1013, as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 9, p. 268.

Compiler's Notes. Sections 8 and 10 of S.L. 2004, ch. 58 are compiled as §§ 46-1008 and 46-1017, respectively.

46-1017. Immunity. — Neither the state, nor the bureau, nor any political subdivision thereof nor other agencies, nor, except in cases of willful misconduct, the agents, employees or representatives of any of them engaged in any civil defense, disaster or emergency and the planning or

preparation for the same, or disaster or emergency relief activities, acting under proper authority, nor, except in cases of willful misconduct or gross negligence, any person, firm, corporation or entity under contract with them to provide equipment or work to be used in civil defense, disaster or emergency planning, preparation or relief, while complying with or attempting to comply with this act or any rule or regulation promulgated pursuant to the provisions of the act, shall be liable for the death of or any injury to persons or damage to property as a result of such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this act or under the worker's compensation law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of congress.

History.
I.C., § 46-1017, as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 10, p. 268.

Compiler's Notes. Section 9 of S.L. 2004, ch. 58 is compiled as § 46-1013, and section 11 contained a repeal.

46-1019. Emergency response. [Repealed.]

Compiler's Notes. This section, which comprised I.C., § 46-1019, as added by 1997, ch. 121, § 11, p. 357; am. 2000, ch. 442, § 1, p. 1402; am. 2000, ch. 469, § 106, p. 1450; am. 2001, ch. 103, § 86, p. 253, was repealed by S.L. 2004, ch. 58, § 11.

46-1021. Definitions. — As used in this act:

(1) "Development" means any manmade change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures, or the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of mobile homes; mining, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of materials; specifically including the construction of dikes, berms and levees. The term "development" does not include the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.

(2) "Flood" means a general or temporary condition of partial or complete inundation of normally dry land areas caused by the overflow or rise of river, ocean, streams or lakes, or the unusual and rapid accumulation or runoff of surface waters from any source.

(3) "Flood fringe" is that portion of the floodplain outside of the floodway covered by floodwaters during the regulatory flood.

(4) "Floodplain" is the land that has been or may be covered by floodwaters, or is surrounded by floodwater and inaccessible, during the occurrence of the regulatory flood. The riverine floodplain includes the floodway and the flood fringe.

(5) "Floodplain management" is the analysis and integration of the entire range of measures that can be used to prevent, reduce or mitigate flood damage in a given location, and that can protect and preserve the natural, environmental, historical, and cultural values of the floodplain.

(6) "Floodproofing" means the modifications of structures, their sites,

building contents and water and sanitary facilities, to keep water out or reduce the effects of water entry.

(7) "Flood protection elevation" means an elevation that shall correspond to the elevation of the one percent (1%) chance flood (one hundred (100) year flood) plus any increased flood elevation due to floodway encroachment, plus any required freeboard.

(8) "Floodway" is the channel of the river or stream and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with the regulatory flood.

(9) "Freeboard" represents a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard shall compensate for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and the sedimentation of a river or stream bed.

(10) "Local government," in the context of this chapter, means any county or city having planning and zoning authority to regulate land use within its jurisdiction.

(11) "Mitigation" means any action taken which will reduce the impact, damage or cost of the next flood that occurs.

(12) "Person" means any individual, group of individuals, corporation, partnership, association, political subdivision, public or private agency or entity.

(13) "Regulatory flood" is a flood determined to be representative of large floods known to have occurred in Idaho and which may be expected to occur on a particular stream because of like physical characteristics. The regulatory flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed. In inland areas, the flood frequency of the regulatory flood is once in every one hundred (100) years; this means that in any given year there is a one percent (1%) chance that a regulatory flood may occur or be exceeded.

History.
I.C., § 46-1021, as added by 1998, ch. 301, § 1, p. 992; am. 2010, ch. 141, § 1, p. 298.

Compiler's Notes. The 2010 amendment, by ch. 141, added the last sentence in subsection (1).

46-1022. Local governments may adopt floodplain zoning ordinances. — Subject to the availability of adequate mapping and data to properly identify the floodplains, if any, within their jurisdiction, each local government is encouraged to adopt a floodplain map and floodplain management ordinance which identifies these floodplains and which requires, at a minimum, that any development in a floodplain must be constructed at a flood protection elevation and/or have adequate floodproofing. The local government may regulate all mapped and unmapped floodplains within their jurisdiction. Nothing in this act shall prohibit a local government from adopting more restrictive standards than those contained in this chapter.

Floodplain zoning ordinances shall not regulate the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.

History.
I.C., § 46-1022, as added by 1998, ch. 301, § 1, p. 992; am. 2010, ch. 141, § 2, p. 298.

Compiler's Notes. The 2010 amendment, by ch. 141, added the last sentence.

46-1025. Federal funds to political subdivisions. — (1) Annually, the chief of the Idaho bureau of homeland security shall prepare a written summary of all grants received from the federal emergency management agency to be distributed to the forty-four (44) county commission chairmen. The summary shall list those federal funds that are eligible for direct assistance to local disaster agencies in accordance with section 46-1009(2), Idaho Code, and those funds that are limited to use by the state and not eligible for direct assistance to local disaster agencies.

(2) Not less than thirty-four percent (34%) of the eligible direct assistance funds shall be subgranted by the Idaho bureau of homeland security to the local disaster agencies. Funds shall be distributed to the local disaster agencies subject to the provisions and rules of the Idaho bureau of homeland security, the federal emergency management agency through the Robert T. Stafford Act, title 44 of the code of federal regulations, and pertinent circulars published by the United States office of management and budget.

(3) Direct financial assistance to the local disaster agencies is not an entitlement. Subgrants are awarded through the Idaho bureau of homeland security for the purpose of assisting counties to achieve goals and objectives outlined in an approved county grant proposal.

History.
I.C., § 46-1025, as added by 2000, ch. 442, § 2, p. 1402; am. 2004, ch. 58, § 12, p. 268.

Compiler's Notes. Section 11 of S.L. 2004, ch. 58 contained a repeal.

46-1026. Definitions. — As used in this section and section 46-1027, Idaho Code, the following terms shall have the following meanings:

(1) "Idaho technical rescue (ITR) teams" means a specialized team or group of teams formed pursuant to this section and section 46-1027, Idaho Code, organized with capabilities established under the federal emergency management agency national resource typing system in order to assist in the removal of trapped victims in emergency situations including, but not limited to, collapsed structures, confined spaces, trench excavations, elevated locations and other technical rescue situations.

(2) "Specialty rescue team (SRT)" means a specialized team, formed pursuant to this section and section 46-1027, Idaho Code, organized to provide technical rescue assistance to supplement and work under first responders and local incident commanders including, but not limited to, cave rescue, mine and tunnel rescue and vehicle/machinery extrication and swift water/flood teams. Such teams shall be aligned with one (1) or more of the categories within the federal emergency management agency's national resource typing system.

(3) "Idaho incident management and support teams (IIMAST)" means a type 3 incident management team, which is a multiagency/multijurisdiction team for extended incidents, formed and managed at the state, regional or metropolitan level deployed as a team of trained personnel to manage major and/or complex incidents requiring a significant number of local, regional and state resources and incidents that extend into multiple operational periods and require a written incident action plan (IAP) that may be utilized at all hazard type incidents. These teams may initially manage larger, more complex incidents prior to arrival of and transition to a type 2 or type 1 incident management team (IMT) under the direction of the agency having the jurisdiction.

(4) "Person" shall have the definition ascribed to it in section 46-1021, Idaho Code.

History.

I.C., § 46-1026, as added by 2010, ch. 179, § 2, p. 367.

Compiler's Notes. Section 1 of S.L. 2010, ch. 179, provided "Legislative Intent. It is the intent of the Legislature to recognize Idaho technical rescue teams, specialty rescue teams, and Idaho incident management and support teams to provide resources that would be unavailable to most communities in Idaho. These teams are local resources that would be available to the state under a disaster declaration. Furthermore, it is the intent of the Legislature that these teams are to work under the authority of the agency having jurisdiction over the area where a response incident occurs. The creation of these teams assists the state in meeting the Federal Emergency Management Agency's strategic goals for disaster preparedness."

Section 4 of S.L. 2010, ch. 179, declared an emergency. Approved March 31, 2010.

46-1027. Military division — Bureau of homeland security — Additional powers and duties. — (1) The military division through the bureau of homeland security shall implement the provisions of this section and section 46-1026, Idaho Code, and in so doing, the military division may:

(a) Through the bureau of homeland security, in accordance with the laws of the state, hire, fix the compensation and prescribe the powers and duties of such other individuals including consultants, emergency teams and committees as may be necessary to carry out the provisions of this section and section 46-1026, Idaho Code.

(b) Identify and implement ITR and specialty rescue teams that have appropriately trained personnel and necessary equipment to respond to technical rescue incidents and emergency disaster events. The military division shall enter into a written joint exercise of powers agreement with each entity or person providing equipment or services to a designated ITR or specialty rescue team. The teams shall be available and may respond to technical rescue incidents at the direction of the military division or its designee. When responding solely at the direction of the local incident commander, no cost recovery from the state of Idaho shall be available to ITR teams.

(c) Identify and implement an Idaho incident management and support team (IIMAST) that has appropriately trained personnel to the type 3 level and necessary equipment to respond to all hazard incidents. The military division shall enter into a joint exercise of powers agreement with each entity or person providing equipment or services to a designated IIMAST member. The teams shall be available and may respond to all

hazard incidents at the direction of the military division or its designee. When responding solely at the direction of the local incident commander, no cost recovery from the state of Idaho shall be available to IIMAST teams.

(d) Contract with persons to meet state emergency response needs for the teams and response authorities.

(e) Advise, consult and cooperate with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments and other persons concerned with technical, rescue and all hazard incident disasters.

(f) Encourage, participate in or conduct studies, investigations, training, research and demonstrations for and with Idaho technical rescue (ITR) teams, specialty rescue teams (SRT), Idaho incident management and support teams (IIMAST), local emergency response authorities and other interested persons.

(g) Collect and disseminate information relating to emergency response to technical rescue related events and all hazards incident disasters.

(h) Accept and administer loans, grants or other funds or gifts, conditional or otherwise, made to the state for emergency response activities provided for in this section and section 46-1026, Idaho Code.

(i) Submit an annual report prior to February 1 to the governor and to the legislature concerning emergency response to technical rescue related events and disasters.

(2) The military division through the bureau of homeland security shall have authority to promulgate rules and provide procedures to:

(a) Govern reimbursement of claims pursuant to this section when a disaster has been declared pursuant to chapter 10, title 46, Idaho Code.

(b) Provide for credentialing of Idaho technical rescue (ITR) teams, specialty rescue teams (SRT), and Idaho incident management and support teams (IIMAST) and for the identification and operation of all teams established pursuant to this section and section 46-1026, Idaho Code, and in accordance with the national incident management system, the national response plan and nationally recognized standards.

(c) Establish a credentialing program to review and evaluate new and existing local and regional technical rescue capabilities and provide recommendations for capability enhancement in accordance with the national incident management system, the national response plan and nationally recognized standards.

(3) Consistent with the provisions of subsections (4) and (5) of this section the state of Idaho shall be liable for the acts or omissions of the Idaho technical rescue (ITR), specialty rescue teams (SRT) and Idaho incident management and support (IIMAST) teams responding to a technical rescue or all hazard incidents as a management team and the designating or requesting city or county shall be liable for the acts or omissions of a local emergency response authority responding to a technical rescue incident within its jurisdiction.

(4) Notwithstanding any other provision of law to the contrary, any Idaho technical rescue (ITR) team, speciality rescue team (SRT), Idaho incident

management and support team (IIMAST), local emergency response authority or other person or group of persons who respond to a technical rescue incident or all hazard incidents as a management team at the request of an incident commander shall not be subject to civil liability for assistance or advice, except as provided in subsection (5) of this section.

(5) The exemption from civil liability provided in this section shall not apply to an act or omission that caused, in whole or in part, such technical rescue or all hazard incident management response to a person who may otherwise be liable therefor or any person who has acted in a grossly negligent, reckless or intentional manner.

(6) Nothing in this section shall be construed to abrogate the immunity granted to governmental entities pursuant to chapter 9, title 6, Idaho Code.

History.

I.C., § 46-1027, as added by 2010, ch. 179, § 3, p. 367.

Compiler's Notes. Section 1 of S.L. 2010, ch. 179, provided "Legislative Intent. It is the intent of the Legislature to recognize Idaho technical rescue teams, specialty rescue teams, and Idaho incident management and support teams to provide resources that would be unavailable to most communities in Idaho. These teams are local resources that would be available to the state under a disaster declaration. Furthermore, it is the intent of the Legislature that these teams are to work under the authority of the agency having jurisdiction over the area where a response incident occurs. The creation of these teams assists the state in meeting the Federal Emergency Management Agency's strategic goals for disaster preparedness."

Section 4 of S.L. 2010, ch. 179, declared an emergency. Approved March 31, 2010.

CHAPTER 11

CODE OF MILITARY JUSTICE

SECTION.

46-1103. Persons subject to the code.

46-1103. Persons subject to the code. — The Idaho code of military justice applies to all members of the Idaho military not in federal service when they are in or lawfully ordered to be in a duty status and to all members of the military forces of any other state when in or ordered to be in a duty status while they are assigned or attached to any command within the Idaho military, unless jurisdiction has been exclusively reserved by the other state's general court-martial convening authority, and at any time any of the aforesaid members engage in activities which tend to bring discredit upon the Idaho national guard or disrupt the good order and discipline thereof. For purposes of section 46-1177, Idaho Code, members of the Idaho military shall be considered to be in a duty status at all times.

History.

I.C., § 46-1104, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 2, p. 190; am. and redesig. 1998, ch. 176, § 2, p. 624; am. 2011, ch. 52, § 1, p. 116.

Compiler's Notes. The 2011 amendment, by ch. 52, added the last sentence of the section.

CHAPTER 12

STATEWIDE COMMUNICATIONS INTEROPERABILITY

SECTION.
46-1201. Definitions. [Null and void, effective December 31, 2018.]
46-1202. Idaho statewide interoperability executive council. [Null and void, effective December 31, 2018.]
46-1203. Purpose. [Null and void, effective December 31, 2018.]
46-1204. Council responsibilities. [Null and void, effective December 31, 2018.]
46-1205. Rules. [Null and void, effective December 31, 2018.]
46-1206. Idaho statewide interoperability executive council communications fund — Establishment and administration. [Null and void, effective December 31, 2018.]
46-1207. Administrative support. [Null and void, effective December 31, 2018.]
46-1208. Meetings. [Null and void, effective December 31, 2018.]
46-1209. Chair and vice-chair. [Null and void, effective December 31, 2018.]
46-1210. Subcommittees. [Null and void, effective December 31, 2018.]
46-1211. Council members. [Null and void, effective December 31, 2018.]
46-1212. Council member terms. [Null and void, effective December 31, 2018.]

46-1201. Definitions. [Null and void, effective December 31, 2018.] — As used in this chapter:

(1) "Cooperation" means to work or to act together towards a common end or purpose.

(2) "Coordination" means harmonious adjustment or interaction of equal functions of similar importance.

(3) "Council" means the Idaho statewide interoperability executive council.

(4) "Interoperability" means the ability of public safety service and support providers, law enforcement, firefighters, EMS, emergency management, public utilities, transportation and others, to communicate when necessary with staff from other responding agencies, and to exchange voice, video and/or data communications on demand, in real time, and when authorized.

History.
I.C., § 46-1201, as added by 2006, ch. 292, § 1, p. 900.
Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

46-1202. Idaho statewide interoperability executive council. [Null and void, effective December 31, 2018.] — There is hereby created in the military division the Idaho statewide interoperability executive council to provide policy level direction and promote efficient and effective use of resources for matters related to public safety wireless radio interoperability.

History.
I.C., § 46-1202, as added by 2006, ch. 292, § 1, p. 900; am. 2008, ch. 127, § 1, p. 348.
Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

The 2008 amendment, by ch. 127, substituted "military division" for "Idaho bureau of homeland security."

Cross Reference. Military division as part of office of governor, § 67-802.

46-1203. Purpose. [Null and void, effective December 31, 2018.] — The council will serve as the governing body in affairs of public safety wireless radio interoperable communications for local and private entities. The council will promote interagency cooperation and provide support statewide for efficient and effective use of local and private resources to achieve public safety wireless radio interoperable communications for local and private public safety agencies.

History.

I.C., § 46-1203, as added by 2006, ch. 292, § 1, p. 900; am. 2007, ch. 292, § 2, p. 828; am. 2008, ch. 127, § 2, p. 348.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

The 2007 amendment, by ch. 292, in the first sentence, substituted "military division" for "Idaho department of administration," and deleted "which is responsible for state agency planning, to meet short-range and long-range telecommunications needs as authorized in chapter 57, title 67, Idaho Code" from the end.

The 2008 amendment, by ch. 127, deleted "and coordinate with the military division" from the end of the first sentence.

Cross Reference. Military division as part of office of governor, § 67-802.

46-1204. Council responsibilities. [Null and void, effective December 31, 2018.] — The responsibilities of the council are to:

(1) Develop and maintain a statewide plan for local and private public safety wireless radio interoperable communications;

(2) Develop, maintain and adopt standards for local and private public safety wireless radio interoperable communications;

(3) Recommend guidelines and standards for operation for local and private public safety wireless radio interoperable communications systems in Idaho;

(4) Promote coordination and cooperation among local, state, federal and tribal public safety agencies in addressing statewide public safety wireless radio interoperable communications needs in Idaho;

(5) Review priorities for statewide public safety wireless radio interoperable communications needs and assist users of the statewide system in the development of projects, plans, policies, standards, priorities and guidelines for public safety wireless radio interoperable communications in coordination and cooperation with public safety communications;

(6) Develop funding recommendations for short-term and long-term system maintenance;

(7) Research best practices of other states;

(8) Provide recommendations to the governor and the legislature of the state of Idaho, when appropriate, concerning issues related to local and private statewide public safety wireless radio interoperable communications in Idaho and in accordance with homeland security presidential directives;

(9) Report annually to the legislature of the state of Idaho on the planned expenditures for the next fiscal year, the collected revenues and moneys

disbursed from the Idaho statewide interoperability communications fund and programs or projects in progress, completed or anticipated;

(10) Serve as a conduit for the future allocation of federal grant funds and other nonfederal grants to support the delivery of public safety wireless radio interoperable communications systems directed towards local government and private entities;

(11) Enter into contracts with experts and/or consultants as may be necessary to carry out the purposes of this chapter and to sue and be sued; and

(12) Work in coordination and cooperation with the Idaho emergency communications commission established by section 31-4815, Idaho Code.

History.

I.C., § 46-1204, as added by 2006, ch. 292, § 1, p. 900; am. 2007, ch. 292, § 3, p. 828; am. 2008, ch. 127, § 3, p. 348; am. 2012, ch. 195, § 2, p. 525.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

The 2007 amendment, by ch. 292, substituted "military division" for "Idaho department of administration" throughout the section.

The 2008 amendment, by ch. 127, in subsections (1), (2), (3), and (5), deleted "in coordination and cooperation with the military division" from the end.

The 2012 amendment, by ch. 195, inserted "and maintain" and "maintain" near the beginning of subsections (1) and (2); added "in coordination and corporation with public safety communications" to the end of subsection (5); deleted former subsection (8) which read, "Prepare and present a report to the information technology resource management council by December 30 of each year describing the council's acts and achievements of the previous year," renumbering the subsequent subsections accordingly; in subsection (10), inserted "and other nonfederal grants"; and deleted "and the information technology resource management council, established by section 67-5745B, Idaho Code" from the end of subsection (12).

46-1205. Rules. [Null and void, effective December 31, 2018.] — The council will promulgate rules pursuant to the provisions of chapter 52, title 67, Idaho Code, to carry out its responsibilities and purpose.

History.

I.C., § 46-1205, as added by 2006, ch. 292, § 1, p. 900.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

46-1206. Idaho statewide interoperability executive council communications fund — Establishment and administration. [Null and void, effective December 31, 2018.] — (1) There is hereby created within the treasury of the state of Idaho a separate fund known as the Idaho statewide interoperability communications fund, which shall consist of moneys received from the state, counties, cities, public safety communications operations, grants, donations, gifts and revenues from any other source to support the delivery of public safety wireless radio interoperable communications systems throughout the state.

(2) Moneys in the fund are hereby continuously appropriated and shall be utilized exclusively for the purposes set forth in this chapter as determined by the council.

(3) The council, through the military division, shall authorize disburse-

ment of moneys in the fund to eligible entities and for the support of this council.

History.
I.C., § 46-1206, as added by 2006, ch. 292, § 1, p. 900; am. 2008, ch. 127, § 4, p. 349.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

The 2008 amendment, by ch. 127, substituted "military division" for "Idaho bureau of homeland security" in subsection (3).

Cross Reference. Military division as part of office of governor, § 67-802.

46-1207. Administrative support. [Null and void, effective December 31, 2018.] — The council may, with concurrence of the governor of the state of Idaho, create the position of an operations manager and the position of an administrative assistant, which positions shall be exempt from the requirements of the merit system, chapter 53, title 67, Idaho Code. In accordance with the laws of the state, the adjutant general may hire, fix the compensation and prescribe the powers and duties of such other individuals, including consultants, as may be necessary to carry out the provisions of this chapter.

History.
I.C., § 46-1207, as added by 2006, ch. 292, § 1, p. 900; am. 2008, ch. 127, § 5, p. 349; am. 2012, ch. 195, § 3, p. 525.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

The 2008 amendment, by ch. 127, substituted "adjutant general" for "Idaho bureau of homeland security's director."

The 2012 amendment, by ch. 195, substituted "an operations manager" for "a project manager" in the first sentence.

46-1208. Meetings. [Null and void, effective December 31, 2018.] — The council will meet no less than four (4) times annually.

History.
I.C., § 46-1208, as added by 2006, ch. 292, § 1, p. 900.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

46-1209. Chair and vice-chair. [Null and void, effective December 31, 2018.] — The governor shall appoint a chair and the council shall elect a vice-chair and other such officers as it may deem necessary and appropriate. The chair has authority and is responsible for all affairs of the council.

History.
I.C., § 46-1209, as added by 2006, ch. 292, § 1, p. 900.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

46-1210. Subcommittees. [Null and void, effective December 31, 2018.] — The council will appoint subcommittees consistent with the needs of the council to address issues including, but not limited to:

(1) Technical support and education issues regarding public safety wireless radio interoperable communications in Idaho;

(2) Federal, state and local funding availability; and

(3) Outreach and liaison with federal and other state organizations working on public safety wireless radio interoperable communications solutions.

History.
I.C., § 46-1210, as added by 2006, ch. 292, § 1, p. 900.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

46-1211. Council members. [Null and void, effective December 31, 2018.] — (1) The council members shall be appointed by the governor and shall include at a minimum the representatives of the following organizations:

(a) One (1) representative from the Idaho transportation department;

(b) One (1) representative from the Idaho sheriffs' association;

(c) One (1) representative from the Idaho chiefs of police association;

(d) One (1) representative from the Idaho fire chiefs association;

(e) One (1) representative from the association of Idaho cities;

(f) One (1) representative from the Idaho association of counties;

(g) One (1) representative from the bureau of homeland security;

(h) One (1) representative from the Idaho department of correction;

(i) One (1) representative from the Idaho state police;

(j) One (1) representative from the Idaho department of lands;

(k) One (1) representative from the Idaho department of fish and game;

(*l*) One (1) representative from the Idaho department of health and welfare;

(m) One (1) representative from Idaho tribal government;

(n) Two (2) members at large; and

(o) One (1) representative from each of the six (6) district interoperable governance boards (DIGBs).

(2) Additional voting members will be invited in the following capacities:

(a) One (1) liaison from federal law enforcement;

(b) One (1) liaison from the United States department of the interior.

History.
I.C., § 46-1211, as added by 2006, ch. 292, § 1, p. 900; am. 2012, ch. 195, § 4, p. 525.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

The 2012 amendment, by ch. 195, in subsection (1), rewrote paragraph (g), which formerly read, "Two (2) representatives from the Idaho military division", deleted former paragraph (h) which read, "One (1) representative from the Idaho department of administration", redesignated the subsequent paragraphs, and added new paragraph (o); and, in subsection (2), deleted former paragraphs (b) and (d) which referenced one representative from homeland security transportation security administration and one representative from the national interagency fire center.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

46-1212. Council member terms. [Null and void, effective December 31, 2018.] — (1) Except as provided in this section, members of the council will be appointed for a term of four (4) years.

(2) Members of the council shall be compensated as provided in section 59-509(b), Idaho Code.

(3) New members may be added or members replaced at annual, special or regular council meetings with approval from the office of the governor for the state of Idaho. Upon resignation of a member, the governor may appoint a replacement for the remainder of the vacated term.

History.

I.C., § 46-1212, as added by 2006, ch. 292, § 1, p. 900; am. 2012, ch. 195, § 5, p. 525.

Compiler's Notes. Section 2 of S.L. 2006, ch. 292, as amended by S.L. 2012, ch. 195, § 1, provided "The provisions of this act shall be null, void and of no force and effect on and after December 31, 2018."

The 2012 amendment, by ch. 195, deleted former subsections (2) and (3), which related to the terms of the initial members of the statewide interoperability executive council, and renumbered former subsections (4) and (5) as present subsections (2) and (3).

TITLE 47

MINES AND MINING

CHAPTER.
2. Idaho Geological Survey, § 47-201.
3. Oil and Gas Wells — Geologic Information, and Prevention of Waste, §§ 47-306, 47-307, 47-315, 47-317 — 47-320, 47-325, 47-326, 47-328, 47-330 — 47-332.
7. Mineral Rights in State Lands, §§ 47-701, 47-711, 47-712, 47-718.
12. License Tax for Privilege of Mining and Extracting Ores, § 47-1206.
15. Surface Mining, §§ 47-1501 — 47-1503, 47-1505 — 47-1508, 47-1512 — 47-1514, 47-1517, 47-1518.
16. Geothermal Resources, §§ 47-1601, 47-1604, 47-1605, 47-1608.
17. Idaho Abandoned Mine Reclamation Act, § 47-1703.

CHAPTER 2

IDAHO GEOLOGICAL SURVEY

SECTION.
47-201. Geological survey created — Purpose — Advisory board.

Compiler's Notes. Section 14 of S.L. 2009, ch. 11, rewrote the chapter heading which formerly read "Bureau of mines and geology".

47-201. Geological survey created — Purpose — Advisory board. — There is hereby created the Idaho geological survey, to be administered as a special program at the university of Idaho under the authority of the board of regents of the university of Idaho. The survey shall be the lead state agency for the collection, interpretation, and dissemination of geologic and mineral data for Idaho. Such information is to be acquired through field and laboratory investigations by the staff of the survey and through cooperative programs with other governmental and private agencies. There is hereby established an advisory board for the survey, consisting of the following members: The director of the survey and board chairperson (nonvoting); the chair of the department of geosciences at Boise state university; the chair of the department of geosciences at Idaho state university; the chair of the department of geological sciences at the university of Idaho; a representative from the mining and mineral processing industry selected by the director; the governor of the state of Idaho or his designated representative; a member of the board of land commissioners or their designated representative; the president or his designee of the Idaho association of professional geologists; and two (2) members at large selected by the director from other state or federal organizations, or from the private sector with a direct interest in the survey's programs, both serving two (2) year staggered terms; all of whom shall serve as members of the said board and shall be compensated as provided by section 59-509(b), Idaho Code.

History.
1919, ch. 54, § 1, p. 163; C.S., § 5481; I.C.A., § 46-201; am. 1933, ch. 22, § 1, p. 29; am. 1974, ch. 17, § 26, p. 308; am. 1980, ch. 247, § 45, p. 582; am. 1984, ch. 101, § 1, p. 229; am. 2003, ch. 46, § 1, p. 174; am. 2010, ch. 67, § 1, p. 116.

Compiler's Notes. The 2010 amendment, by ch. 67, substituted "or their designated representatives" for "designated by the state land board" in the last sentence.

CHAPTER 3

OIL AND GAS WELLS — GEOLOGIC INFORMATION, AND PREVENTION OF WASTE

SECTION.
47-306. Records of logs — Classification of rocks, fossils, and minerals — Reports to authorized persons.
47-307. Use of information.
47-315. Public interest.
47-317. Oil and gas conservation commission created — Powers — Limit on local restrictions — Attorney general.
47-318. Definitions.
47-319. Land subject to act — Authority of commission.
47-320. Permit to drill or treat a well.
47-325. Powers of commission — Witnesses — Penalty.
47-326. Falsification of records — Limitation of actions.
47-328. Act not construed to restrict production.
47-330. Oil and gas conservation fund created — Tax.
47-331. Additional tax on oil and gas produced. [Repealed.]
47-332. Distribution of revenues. [Repealed.]

47-306. Records of logs — Classification of rocks, fossils, and minerals — Reports to authorized persons. — The Idaho geological survey shall preserve orderly records of logs filed with it and shall determine and record and classify rocks shown by samples, identify fossils and minerals, and, on request, shall supply to the properly authorized person, connected with the drilling operations from which logs and samples are received a report of such determinations and identifications.

History.
1931, ch. 115, § 6, p. 196; I.C.A., § 46-306; am. 2009, ch. 11, § 15, p. 14.

Compiler's Notes. The 2009 amendment, by ch. 11, substituted "The Idaho geological survey" for "The bureau of mines and geology."

47-307. Use of information. — The Idaho geological survey is hereby authorized to utilize in its study of regional rock structures, mineral deposits, and underground water resources, the information so derived.

History.
1931, ch. 115, § 7, p. 196; I.C.A., § 46-307; am. 2009, ch. 11, § 16, p. 14.

Compiler's Notes. The 2009 amendment, by ch. 11, substituted "The Idaho geological survey" for "The bureau of mines and geology."

47-315. Public interest. — It is declared to be in the public interest to foster, encourage and promote the development, production and utilization of natural resources of oil and gas in the state of Idaho in such a manner as will prevent waste; to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho; to authorize and to provide for the operations and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas

may be obtained and that the correlative rights of all owners be fully protected; to encourage, authorize and provide for voluntary agreements for cycling, recycling, pressure maintenance and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers and the general public may realize and enjoy the greatest possible good from these vital natural resources.

History.
1963, ch. 148, § 1, p. 433; am. 2012, ch. 111, § 1, p. 302.

Compiler's Notes. The 2012 amendment, by ch. 111, inserted "to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho" near the beginning of the section.

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

47-317. Oil and gas conservation commission created — Powers — Limit on local restrictions — Attorney general. — (1) There is hereby created an oil and gas conservation commission of the state of Idaho which shall consist of the state board of land commissioners.

(2) The commission shall have and is hereby given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this act, and shall have power and authority to make and enforce rules, regulations and orders, and do whatever may reasonably be necessary to carry out the provisions of this act. Any delegation of authority to any other state officer, board or commission to administer any and all other laws of this state relating to the conservation of oil and gas is hereby rescinded and withdrawn and such authority is hereby unqualifiedly conferred upon the commission, as herein provided. Any person, or the attorney general, on behalf of the state, may apply for a hearing before the commission, or the commission may initiate proceedings, upon any question relating to the administration of this act, and jurisdiction is hereby conferred upon the commission to hear and determine the same and enter its rule, regulation or order with respect thereto.

(3) It is the intent of the legislature to occupy the field of the regulation of oil and gas exploration and production with the limited exception of the exercise of planning and zoning authority granted cities and counties pursuant to chapter 65, title 67, Idaho Code.

(4) To implement the purpose of the oil and gas conservation act, and to advance the public interest in the orderly development of the state's oil and gas resources, while at the same time recognizing the responsibility of local governments to protect the public health, safety and welfare, it is herein provided that:

(a) The commission will notice the respective city or county with jurisdiction upon receipt of an application and will remit, electronically, a copy of all application materials.

(b) No ordinance, resolution, requirement or standard of a city, county or political subdivision, except a state agency with authority, shall actually or operationally prohibit the extraction of oil and gas; provided however, that extraction may be subject to reasonable local ordinance provisions, not repugnant to law, which protect public health, public safety, public order or which prevent harm to public infrastructure or degradation of the

value, use and enjoyment of private property. Any ordinance regulating extraction enacted pursuant to chapter 65, title 67, Idaho Code, shall provide for administrative permitting under conditions established by ordinance, not to exceed twenty-one (21) days, unless extended by agreement of the parties or upon good cause shown.

(c) No ordinance, resolution, requirement or standard of a city, county or political subdivision, except a state agency with authority, shall actually or operationally prohibit construction or operation of facilities and infrastructure needed for the post-extraction processing and transport of gas and oil. However, such facilities and infrastructure shall be subject to local ordinances, regulations and permitting requirements, not repugnant to law, as provided in chapter 65, title 67, Idaho Code.

(5) The commission may sue and be sued in its administration of this act in any state or federal district court in the state of Idaho having jurisdiction of the parties or of the subject matter.

(6) The attorney general shall act as the legal advisor of the commission and represent the commission in all court proceedings and in all proceedings before it, and in any proceeding to which the commission may be a party before any department of the federal government.

History.

1963, ch. 148, § 3, p. 433; am. 1974, ch. 17, § 30, p. 308; am. 2012, ch. 111, § 2, p. 302.

Compiler's Notes. The term "this act" refers to S.L. 1963, ch. 148, which is codified as §§ 47-315 to 47-330.

The 2012 amendment, by ch. 111, inserted "Limit on local restrictions" into the section heading; redesignated former subsections (a) and (b) as subsections (1) and (2) and former subsections (c) and (d) as subsections (5) and (6); and added subsections (3) and (4)

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

Cross Reference. Oil and gas conservation act, § 47-329.

47-318. Definitions. — Unless the context otherwise requires, the terms defined in this section shall have the following meaning when used in this act:

(a) "Commission" means the oil and gas conservation commission.

(b) "Condensate" means the liquid produced by the condensation of a vapor or gas either after it leaves the reservoir or while still in the reservoir.

(c) "Correlative rights" means the owners' or producers' just and equitable share in a pool.

(d) "Field" means the general area underlaid by one (1) or more pools.

(e) "Gas" means any petroleum hydrocarbon existing in the gaseous phase.

(f) "Market value" means the price at the time of sale, in cash or on terms reasonably equivalent to cash, for which the oil or gas should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus from either party. The costs of marketing, transporting and processing oil and gas produced shall be borne entirely by the producer, and such cost shall not reduce the producer's tax directly or indirectly.

(g) "Oil" or "crude oil" means petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by

ordinary production methods and are not the result of gas condensation before or after it leaves the reservoir.

(h) "Oil and gas" means oil or gas or both.

(i) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom, either for himself or for himself and others.

(j) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders.

(k) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool.

(*l*) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(m) "Reservoir" means a subsurface volume of porous and permeable rock in which oil or gas has accumulated.

(n) "Waste" as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells.

(o) "Waste" as applied to oil means and includes underground waste; inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use and sale; the locating, drilling, equipping, operating or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations.

(p) The use of the plural includes the singular, and the use of the singular includes the plural.

History.
1963, ch. 148, § 4, p. 433; am. 2012, ch. 73, § 1, p. 209.

Compiler's Notes. The term "this act" refers to S.L. 1963, ch. 148, which is codified as §§ 47-315 to 47-330.

The 2012 amendment, by ch. 73, rewrote and alphabetized the definitions.

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

47-319. Land subject to act — Authority of commission. — (1) This act shall apply to all lands located in the state, however owned, including

any lands owned or administered by any government or any agency or political subdivision thereof, over which the state under its police power, has jurisdiction.

(2) The commission is authorized and it is its duty to regulate the exploration for and production of oil and gas, prevent waste of oil and gas and to protect correlative rights, and otherwise to administer and enforce this act. It has jurisdiction over all persons and property necessary for such purposes. In the event of a conflict, the duty to prevent waste is paramount.

(3) The commission is authorized to make such investigations as it deems proper to determine whether action by the commission in discharging its duties is necessary.

(4) Without limiting its general authority, the commission shall have the specific authority to require:

(a) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas;

(b) The taking and preservation of samples and the making and filing with the commission of true and correct copies of well logs and directional surveys both in form and content as prescribed by the commission; provided however, that logs of exploratory or wildcat wells marked confidential shall be subject to disclosure according to chapter 3, title 9, Idaho Code, and shall be kept confidential by the commission for a period of one (1) year from the date of filing the log with the commission. And provided that the commission may use any well logs and directional surveys in any action to enforce the provisions of this chapter or any order or rule adopted hereunder. And provided further, that after four (4) months from the effective date of this act, the commission may require the owner of a well theretofore drilled for oil or gas to file within four (4) months of such order a true and correct copy of the log or logs of such well;

(c) The drilling, casing, operation and plugging of wells in such manner as to prevent: (i) the escape of oil or gas out of one (1) pool into another; (ii) the detrimental intrusion of water into an oil or gas pool that is avoidable by efficient operations; (iii) the pollution of fresh water supplies by oil, gas, or salt water; (iv) blow-outs, cavings, seepages, and fires; and (v) waste as hereinabove defined;

(d) The taking of tests of oil or gas wells;

(e) The furnishing of a reasonable performance bond with good and sufficient surety, conditioned upon the performance of the duty to comply with the requirements of this law and the regulations of the commission with respect to the drilling, maintaining, operating and plugging of each well drilled for oil or gas;

(f) That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be measured by means and upon standards that may be prescribed by the commission;

(g) That wells not be operated with inefficient gas-oil or water-oil ratios, and to fix these ratios, and to limit production from wells with inefficient gas-oil or water-oil ratios;

(h) Metering or other measuring of oil, gas, or product;

(i) That every person who produces oil and gas in the state keep and maintain for a period of five (5) years complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission or its agents at all reasonable times within said period, and that every such person file with the commission such reasonable reports as it may prescribe with respect to such oil or gas production; and

(j) The filing of reports of plats with the commission that it may prescribe.

(5) Without limiting its general authority, and without limiting the authority of other state agencies or local government as provided by law, the commission shall have the specific authority to regulate:

(a) The drilling and plugging of wells and the compression or dehydration of produced oil and gas, and all other operations for the production of oil and gas;

(b) The shooting and treatment of wells;

(c) The spacing or locating of wells;

(d) Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into a producing formation; and

(e) The disposal of salt water and oil-field wastes.

(6) The commission is authorized to classify and reclassify pools as oil, gas, or condensate pools, or wells as oil, gas, or condensate wells.

(7) The commission is authorized to make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act.

History.

1963, ch. 148, § 5, p. 433; am. 1990, ch. 213, § 63, p. 480; am. 2012, ch. 73, § 2, p. 209; am. 2012, ch. 111, § 3, p. 302.

Compiler's Notes. The term "this act" refers to S.L. 1963, ch. 148, which is codified as §§ 47-315 to 47-330.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 73, in paragraph (d)(2), added "and shall be kept confidential by the commission for a period of one (1) year from the date of filing the log with the commission" to the first sentence and added the second sentence; and designated the former last paragraph of subsection (d) as subsection (e), adding the words "Without limiting its general authority, the commission shall have the specific authority."

The 2012 amendment, by ch. 111, changed the designation scheme within the section; inserted "to regulate the exploration for and production of oil and gas" in the first sentence in subsection (2); substituted "oil and gas" for "oil or gas" in paragraph (4)(i) and at the end of paragraph (5)(a); divided the last paragraph of former subsection (d) into present subsections (5) to (7), adding the introductory language in each subsection.

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

47-320. Permit to drill or treat a well. — (1) It shall be unlawful to commence operations for the drilling or treating of a well for oil or gas without first giving notice to the commission of intention to drill or treat and without first obtaining a permit from the commission under such rules and regulations as may be reasonably prescribed by the commission and by paying to the commission a filing and service fee of one hundred dollars ($100) for such permit, which shall be remitted to the state treasurer for

deposit in the oil and gas conservation fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of this act. No permit may be issued by the commission until the commission shall notify the director of the department of water resources and said director shall have fifteen (15) days from the date of receipt of such notification from the commission to recommend conditions he believes necessary to protect fresh water supplies.

Upon issuance of any permit, a copy thereof, including any limitations, conditions, controls, rules or regulations attached thereto for the protection of fresh water supplies as required in section 47-319, Idaho Code, shall be forwarded to the director of the department of water resources.

(2) The filing and service fee as provided in subsection (1) of this section shall be temporarily raised to a maximum of up to two thousand five hundred dollars ($2,500) beginning on the effective date of this act. On and after July 1, 2017, the filing and service fee shall be reduced to one hundred dollars ($100).

History.

1963, ch. 148, § 6, p. 433; am. 1973, ch. 255, § 1, p. 506; am. 1974, ch. 17, § 31, p. 308; am. 2012, ch. 71, § 1, p. 207.

Compiler's Notes. The term "this act" in subsection (1) refers to S.L. 1963, ch. 148, which is codified as §§ 47-315 to 47-330.

The 2012 amendment, by ch. 71, added "or treat a well" to the end of the section heading; designated the existing provisions of the section as subsection (1); inserted "or treating" and "or treat" near the beginning of the first sentence in the first paragraph of subsection (1); and added subsection (2).

The phrase "the effective date of this act" in subsection (2) refers to the effective date of S.L. 2012, ch. 71, which was effective March 20, 2012.

Section 2 of S.L. 2012, ch. 71 declared an emergency. Approved March 20, 2012.

47-325. Powers of commission — Witnesses — Penalty. — (a) The commission shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

(b) In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of refusal of any witness to testify as to any matter regarding which he may be interrogated, any district court in the state, upon the application of the commission, may issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

(c) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated hereunder may be assessed a civil penalty by the commission or its duly authorized agent of not more than ten thousand dollars ($10,000) for each violation and shall be liable for reasonable attorney's fees. Each day the violation continues shall constitute a separate and additional violation, punishable by separate and additional civil penalties in like amount or other like civil penalties as determined by the commission; provided that the civil penalties do not begin to accrue until the date notice of violation and opportunity to be heard are given.

(1) Assessment of a civil penalty may be made in conjunction with any other commission administrative action.

(2) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to chapter 52, title 67, Idaho Code, which civil penalty begins to accrue no earlier than the date notice of violation and opportunity for a hearing are given.

(3) If the commission is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commission, it may recover such amount by action in the appropriate district court.

(4) Any person against whom the commission has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the commission to have occurred pursuant to chapter 52, title 67, Idaho Code.

(5) All civil penalties collected pursuant to this section shall be remitted to the oil and gas conservation fund.

(d) Whenever it shall appear that any person is violating or threatening to violate any provision of this act or any rule, regulation, or order made hereunder, the commission may bring a civil action in the name of the state against such person in the district court in the county of the residence of the defendant, or in the county of the residence of any defendant, if there be more than one (1) defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit, the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions. In such suit, the commission may seek damages to recover costs caused by such violation including, but not limited to, costs of well control, spill response and cleanup, restoration of fresh waters, well plugging and abandonment, and reclamation of surface disturbance.

(e) Nothing in this act, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this act, or any rule, regulation or order issued hereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any provision of this act, or any rule, regulation, or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he otherwise may be entitled to receive. In the event the commission shall fail to bring suit to enjoin any actual or threatened violation of this act, or of any rule, regulation or order made hereunder, then any person or party in interest adversely affected and who has, ten (10) days or more prior thereto, notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit.

(f) Any person who knowingly violates any provision of this chapter, or any of the rules promulgated hereunder for carrying out the provisions of

this chapter, or who knowingly fails or refuses to comply with any requirements herein specified, or who knowingly interferes with the commission, its agents, designees or employees in the execution or on account of the execution of its or their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five thousand dollars ($5,000) or be imprisoned in a county jail for not more than twelve (12) months, or be subject to both such fine and imprisonment.

(g) Nothing in this chapter shall be construed as requiring the commission to report minor violations for prosecution when it believes that the public interest will be best served by suitable warnings or other administrative action.

History.

1963, ch. 148, § 11, p. 433; am. 2012, ch. 73, § 3, p. 209; am. 2012, ch. 80, § 1, p. 230.

Compiler's Notes. The term "this act" refers to S.L. 1963, ch. 148, which is codified as §§ 47-315 to 47-330.

The 2012 amendment, by ch. 73, substituted "may issue" for "may in term time or vacation issue" in the first sentence in paragraph (b); added subsection (c) and redesignated the subsequent subsections accordingly; added the last sentence in present subsection (d); deleted the former last sentence in subsection (e), which read, "If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party"; and added subsections (f) and (g).

The 2012 amendment, by ch. 80, in subsection (c), added the proviso at the end of the introductory paragraph and inserted "which civil penalty begins to accrue no earlier than the date notice of violation and opportunity for a hearing are given" in paragraph (2); and, near the beginning of subsection (f), added "knowingly" preceding "fails" and preceding "interferes."

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

47-326. Falsification of records — Limitation of actions. — (a) Any person who, for the purpose of evading this act or any rule, regulation or order of the commission shall make or cause to be made any false entry in any report, record, account, or memorandum required by this act, or by any such rule, regulation or order, or shall omit, or cause to be omitted, from any such report, record, account, or memorandum, full, true and correct entries as required by this act, or by any such rule, regulation or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account, or memorandum, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than five thousand dollars ($5,000) or imprisonment for a term not exceeding twelve (12) months, or to both such fine and imprisonment.

(b) No suit, action or other proceeding based upon a violation of this act or any rule, regulation or order of the commission hereunder shall be commenced or maintained unless same shall have been commenced within one (1) year from date of the alleged violation. Provided however, the provisions of this subsection shall not apply to actions governed by the provisions of chapter 52, title 67, Idaho Code.

History.

1963, ch. 148, § 12, p. 433; am. 2012, ch. 73, § 4, p. 209.

Compiler's Notes. The term "this act" refers to S.L. 1963, ch. 148, which is codified as §§ 47-315 to 47-330.

The 2012 amendment, by ch. 73, deleted "Actions against the commission — Appeals"

from the section heading and deleted former subsections (a) and (b) pertaining to such actions; redesignated former subsections (c) and (d) as present subsections (a) and (b); substituted "twelve (12) months" for "six (6) months" near the end of subsection (a); and added the last sentence in subsection (b).

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

47-328. Act not construed to restrict production. — It is not the intent or purpose of this law to require the proration or distribution or the production of oil and gas among the fields of Idaho on the basis of market demand. This act shall never be construed to require, permit, or authorize the commission or any court to make, enter, or enforce any order, rule, regulation or judgment requiring restriction of production due to market demand of any pool or of any well (except as provided in section 47-319, Idaho Code, hereof) to an amount less than the well or pool can produce without waste in accordance with sound engineering practices.

History.

1963, ch. 148, § 14, p. 433; am. 2012, ch. 73, § 5, p. 209.

Compiler's Notes. The term "this act" refers to S.L. 1963, ch. 148, which is codified as §§ 47-315 to 47-330.

The 2012 amendment, by ch. 73, inserted "due to market demand" near the middle of the second sentence.

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

47-330. Oil and gas conservation fund created — Tax. — (1) For the purposes of paying the expenses of administration of this act and for the privilege of extracting oil and gas in this state, there is hereby levied and imposed on all oil and gas produced, saved and sold or transported from the premises in Idaho where produced a tax of two and one-half percent (2.5%) of the market value of the oil or gas produced at the site of production. If the oil and gas is transported from the premises prior to sale, then the tax will be determined based on the published henry hub spot price for gas or wti cushing spot price for crude oil at the close of business the day the oil or gas leaves the premises. Transportation from the premises prior to the sale does not include movement of oil or gas from the wellhead to another site in Idaho by the same person for dehydration or other processing required for sale. This tax is in addition to all other taxes provided by law. It shall be the duty of the state tax commission to enforce collection of this tax and to make such rules as may be necessary, pursuant to the provisions of chapter 52, title 67, Idaho Code. All money so collected shall be remitted to the state treasurer for deposit in the oil and gas conservation fund, which fund is hereby created in the office of the state treasurer of the state of Idaho.

(2) The persons owning an interest (working interest, royalty interest, payments out of production, or any other interest), in the oil and gas, or in the proceeds thereof, shall be liable for such tax in proportion to their ownership at the time of production. The tax so assessed and fixed shall be payable quarterly, and the sum so due shall be remitted to the state tax commission, on or before the twentieth (20th) of the next month following the preceding quarter in which the tax accrued, by the producer on behalf of himself and all other interested persons. The person remitting the tax, as herein provided, is hereby empowered and required to deduct from any amounts due the persons owning an interest in the oil and gas, or in the

proceeds thereof, at the time of production a proportionate amount of such tax before making payment to such persons.

(3) The tax imposed by this section shall apply to all lands in the state of Idaho, anything in this act to the contrary notwithstanding; provided however, there shall be exempted from the tax hereinabove levied and assessed the following, to wit:

(a) The interest of the United States of America and the interest of the state of Idaho and the political subdivisions thereof in any oil or gas or in the proceeds thereof.

(b) The interest of any Indian or Indian tribe in any oil or gas or the proceeds thereof, produced from lands subject to the supervision of the United States.

(c) Oil and gas used in producing operations or for repressuring or recycling purposes.

(4) To the extent that such sections are not in conflict with the provisions of this act, the deficiency in tax and notice of deficiency as well as the collection and enforcement procedures provided by the Idaho income tax act, sections 63-3038, 63-3039, 63-3040, 63-3042 through 63-3065A, 63-3068, 63-3071 and 63-3075 through 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and the assessment and collection of any amounts due. Said sections shall for this purpose be considered a part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection pursuant to this act, be described as an oil and gas tax lien or proceeding.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment or any other amount erroneously or illegally collected shall be paid or satisfied out of the state refund account created by section 63-3067, Idaho Code.

(5) All moneys collected under this chapter shall be distributed by the state tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the state tax commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) For the balance of the proceeds, forty percent (40%) shall be distributed by the end of the month following each quarterly due date by the state tax commission into any oil and gas revenue share account as follows:

(i) Twenty-eight percent (28%) is hereby appropriated and shall be paid to the current expense fund of the county from which the oil or gas was produced;

(ii) Twenty-eight percent (28%) is hereby appropriated and shall be paid to the cities within the county from which the oil or gas was produced. Such funds shall be distributed to each city based upon the

proportion that the city's population bears to the total population of all of the cities within the county;

(iii) Twenty-eight percent (28%) is hereby appropriated and shall be paid to the public school income fund; and

(iv) Sixteen percent (16%) shall be transferred to the local economic development account that is hereby created in the agency asset fund to provide assistance in those counties experiencing a severe economic hardship due to the cutback or closure of business and industry associated with oil or gas production.

(c) The remainder of the moneys deposited into the oil and gas conservation fund, sixty percent (60%) of the proceeds after refunds, may be expended pursuant to legislative appropriation and shall be used for defraying the expenses of the oil and gas conservation commission in carrying out the provisions of this act. At the beginning of each fiscal year, those moneys in the oil and gas conservation fund, after applicable refunds and distribution as noted in paragraphs (a) and (b) of this subsection, that exceed two hundred percent (200%) of the current year's appropriations for the oil and gas conservation commission shall be transferred to the general fund. The oil and gas conservation commission shall audit all bills for salaries and expenses incurred in the enforcement of this act that may be payable from the oil and gas conservation fund which shall be audited, allowed and paid as to the claims against the state.

History.
1963, ch. 148, § 17, p. 433; am. 2012, ch. 79, § 1, p. 228.

Compiler's Notes. The term "this act" in subsections (1) and (3) refers to S.L. 1963, ch. 148, which is codified as §§ 47-315 to 47-330.

The 2012 amendment, by ch. 79, rewrote the section, adding subsections (4) and (5).

The term "this act" in subsections (4) and (5) refers to S.L. 2012, ch. 79, which is codified as this section only.

Section 4 of S.L. 2012, ch. 79 provided that the act should take effect on and after April 1, 2012.

Cross Reference. State tax commission, § 63-101.

47-331. Additional tax on oil and gas produced. [Repealed.]

Repealed by S.L. 2012, ch. 79, § 2, effective April 1, 2012.

History.
I.C., § 47-331, as added by 1981, ch. 141, § 1, p. 243; am. 1983, ch. 118, § 1, p. 261.

47-332. Distribution of revenues. [Repealed.]

Repealed by S.L. 2012, ch. 79, § 3, effective April 1, 2012.

History.
I.C., § 47-332, as added by 1983, ch. 118, § 2, p. 261.

CHAPTER 7

MINERAL RIGHTS IN STATE LANDS

SECTION.
47-701. Reservation of mineral deposits to state — Terms defined.
47-711. Sale of state lands containing mineral deposits.
47-712. Applications to purchase — Certificates of purchase.
47-718. Violations — Remedies — Penalties.

47-701. Reservation of mineral deposits to state — Terms defined. — (1) The terms "mineral lands," "mineral," "mineral deposits," "deposit," and "mineral right," as used in this chapter, and amendments thereto shall be construed to mean and include all coal, oil, oil shale, gas, phosphate, sodium, asbestos, gold, silver, lead, zinc, copper, antimony, geothermal resources, salable minerals, and all other mineral lands, minerals or deposits of minerals of whatsoever kind or character.

(2) Such deposits in lands belonging to the state are hereby reserved to the state and are reserved from sale except upon a rental and royalty basis and except when the surface estate is identified by the state board of land commissioners as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes. Except for the aforementioned purposes, the purchaser of all other state land shall acquire no right, title or interest in or to such deposits, and the right of such purchaser shall be subject to the reservation of all mineral deposits and to the conditions and limitations prescribed by law providing for the state and persons authorized by it to prospect for, mine, and remove such deposits and to occupy and use so much of the surface of said land as may be required for all purposes reasonably incident to the mining and removal of such deposits therefrom.

(3) An exchange of state land consummated by the board under authority of section 58-138, Idaho Code, shall not be considered a sale of state lands. The transfers of mineral deposits heretofore made in such exchanges are hereby approved.

History.
1923, ch. 96, § 1, p. 115; am. 1925, ch. 220, § 1, p. 404; I.C.A., § 46-701; am. 1981, ch. 325, § 1, p. 676; am. 1986, ch. 81, § 1, p. 239; am. 1992, ch. 226, § 1, p. 676; am. 2004, ch. 13, § 1, p. 10.

Compiler's Notes. Section 2 of S.L. 2004, ch. 13 is compiled as § 47-711.

Cited in: Harris v. State Ex Rel. Kempthorne, 147 Idaho 401, 210 P.3d 86 (2009).

47-711. Sale of state lands containing mineral deposits. — (1) Lands in which minerals are contained and the surface of which has a value for other purposes may be sold as a single estate under the provisions of chapter 3, title 58, Idaho Code, relating to the sale of state lands, when the state land is identified as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes.

(2) For lands in which the surface estate previously has been sold with a reservation of the mineral estate, for which there is no lease of such mineral estate to any person other than the owner of the surface estate, and for

which the potential highest and best use is for development purposes such as residential, commercial or industrial purposes, the mineral estate may be sold for its appraised value under the provisions of chapter 3, title 58, Idaho Code. The purchaser of a mineral estate who is not the owner of the surface estate shall have the same rights and liabilities with regard to the surface estate as identified in section 47-708, Idaho Code.

(3) In the sale of the surface estate of all other state land, there shall be reserved to the state all mineral deposits and the right of the purchaser shall be subject to the conditions and limitations prescribed by law providing for the state or persons authorized by it to prospect for, mine and remove such deposits and to occupy and use so much of the surface of such land as may be required for all purposes reasonably incident to the mining and removal of such deposits therefrom.

History.
1923, ch. 96, § 13, p. 115; I.C.A., § 46-713; am. 2004, ch. 13, § 2, p. 10; am. 2004, ch. 271, § 1, p. 757.

Compiler's Notes. Section 1 of S.L. 2004, ch. 13 is compiled as § 47-701.

S.L. 2004, ch. 271, § 1 amends this section as previously amended by S.L. 2004, ch. 13, § 2.

47-712. Applications to purchase — Certificates of purchase. — All applications to purchase those state lands that have not been identified as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes approved subsequent to the passage of this chapter shall be subject to a reservation to the state of all mineral deposits in said land. The state or persons authorized by it to prospect for, mine and remove the same as provided by law; and certificates of purchase issued by the state shall contain such reservation.

History.
1923, ch. 96, § 14, p. 115; am. 1925, ch. 220, § 7, p. 404; I.C.A., § 46-714; am. 2004, ch. 13, § 3, p. 10.

47-718. Violations — Remedies — Penalties. — (1) In addition to any other penalties and remedies of this chapter and at law, any person, firm, or corporation who violates any provisions of this chapter or rules adopted pursuant thereto, or who fails to perform the duties imposed thereby, or who violates any determination or order thereunder or any violation of a lease granted under this chapter, the director of the department of lands may:

(a) Proceed by legal action in the name of the state of Idaho to enjoin the violation, by temporary restraining order, preliminary injunction and/or permanent injunction.

(i) The court, or a judge thereof at chambers, if satisfied from a verified complaint or by affidavit that the alleged violation has been or is being committed, may issue a temporary restraining order, without notice or bond, enjoining the defendant, his agents, employees, contractors and assigns from further violation, or from conducting exploration or mining on the state lands affected by the violation.

(ii) The verified complaint or affidavit that the alleged violation has

been or is being committed shall constitute prima facie evidence of great or irreparable injury and/or great waste sufficient to support the temporary restraining order.

(iii) The action shall thereafter proceed as in other cases for injunctions. If at the trial the violation is established, the court shall enter a decree perpetually enjoining said defendant, his agents, employees, contractors and assigns from thereafter committing said or similar violations.

(b) Proceed by legal action in the name of the state of Idaho to obtain an order requiring the operator to promptly repair the damage and reclaim the state lands in accordance with the requirements of section 47-703A, Idaho Code, and rules adopted pursuant thereto. If thereafter the court finds that the operator is not promptly complying with such order, the court shall order the operator to immediately pay an amount determined by the department to be the anticipated cost of reasonable repair and reclamation in accordance with section 47-703A(2), Idaho Code, and rules adopted pursuant thereto.

(c) Proceed to forfeit the operator's bond required by section 47-703A(1), 47-704(6) or 47-708, Idaho Code. The board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which includes a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt signed by the lessee, an officer of a corporate lessee, or the designated agent of the lessee shall constitute service. The lessee shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the lessee fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the lessee, and the board may proceed to forfeit the bond in the amount necessary to reclaim affected lands and pay for any outstanding royalties and related administrative costs. The director of the department of lands is empowered to issue subpoenas. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code. The hearing officer shall enter an order in accordance with chapter 52, title 67, Idaho Code. Appeal to a district court shall be in accordance with chapter 52, title 67, Idaho Code.

(d) Cancel the lease in accordance with section 47-707, Idaho Code.

(2) In addition to the injunctive remedies of subsection (1)(a) of this section:

(a) Proceed in the first instance by legal action in the name of the state of Idaho to recover from an operator who without bond has conducted or is conducting exploration with heavy equipment on state lands, including lands between the ordinary high watermarks of navigable rivers, the cost of repairing damage to and reclaiming the affected state lands in accordance with section 47-703A(2), Idaho Code, and rules adopted pursuant thereto; or if the bond on file with the department of lands is not sufficient to adequately reclaim the affected state lands, to recover the

cost in excess of the bond to reclaim the affected state lands in accordance with section 47-703A(2), Idaho Code, and rules adopted pursuant thereto.

(b) Proceed by legal action in the name of the state of Idaho to recover from an operator who has removed minerals in commercial quantities from state lands, including lands between the ordinary high watermarks of navigable rivers, in violation of the provisions of section 47-717, Idaho Code, damages in the amount of the prevailing royalty rate set by the board of land commissioners for the particular mineral removed plus interest from the date of removal at the legal rate of interest due on money judgments set by the Idaho state treasurer pursuant to section 28-22-104, Idaho Code, from the date of removal to judgment.

(3) In addition to any other penalties or injunctive remedies of this chapter, any person, firm, or corporation who violates any of the provisions of this chapter or rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this chapter, shall be liable to a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day during which any provision of this chapter, rule or order has been or is being violated. All sums recovered shall be credited to the general fund.

(4) An appeal from a final judgment of the district court shall be taken in the manner provided by law for appeals in civil cases.

History.

I.C., § 47-718, as added by 1981, ch. 325, § 6, p. 676; am. 1989, ch. 262, § 2, p. 639; am. 1993, ch. 216, § 43, p. 587; am. 2012, ch. 196, § 1, p. 527.

Compiler's Notes. The 2012 amendment, by ch. 196, substituted "the legal rate of interest due on money judgments set by the Idaho state treasurer pursuant to section 28-22-104, Idaho Code" for "the average annual interest rate of the investment board" near the end of paragraph (2)(b).

CHAPTER 9

RIGHTS OF WAY AND EASEMENTS FOR DEVELOPMENT OF MINES

47-903. Action to condemn right of way.

Analysis

Condemnation denied.
Construction with other law.

Condemnation Denied.

With respect to an action by mine claim owners against neighbors seeking condemnation of a right of way across their properties, the owners were not entitled to condemnation because: (1) they could not get access to the portion of the roads in question on the neighbors' properties without first getting access across the property of other neighbors; and (2) the owner's claims against the other neighbors had failed. Andrus v. Nicholson, 145 Idaho 774, 186 P.3d 630 (2008).

Construction With Other Law.

Mine claim owners' action against neighbors seeking condemnation of a right of way across their properties was barred by res judicata because, in a previous action between the same parties, the owners had sought the same result by asserting a statutory right to the use of roads across the neighbors' properties. Andrus v. Nicholson, 145 Idaho 774, 186 P.3d 630 (2008).

CHAPTER 12

LICENSE TAX FOR PRIVILEGE OF MINING AND EXTRACTING ORES

SECTION.
47-1206. Payment of mine license tax.

47-1206. Payment of mine license tax. — (1) Except as provided in subsection (2), the license tax imposed by this chapter shall be paid to the state tax commission on or before the due date of the return and the commission shall remit the sums to the state treasurer, who shall place sixty-six percent (66%) to the credit of the general fund of the state and thirty-four percent (34%) to the credit of the abandoned mine reclamation fund created by the provisions of section 47-1703, Idaho Code.

(2) The license tax imposed by this chapter only on mining operations that include a cyanidation facility, as defined by section 47-1503, Idaho Code, shall be paid to the state tax commission on or before the due date of the return and the commission shall remit the sums to the state treasurer who shall place thirty-three percent (33%) to the credit of the general fund of the state, thirty-three percent (33%) to the credit of the cyanidation facility closure fund created by the provisions of section 47-1513, Idaho Code, and thirty-four percent (34%) to the credit of the abandoned mine reclamation fund created by the provisions of section 47-1703, Idaho Code.

History.
1935 (1st E.S.), ch. 65, § 6, p. 182; am. 1939, ch. 173, § 8, p. 320; am. 1969, ch. 311, § 1, p. 966; am. 1977, ch. 93, § 5, p. 189; am. 1999, ch. 44, § 1, p. 105; am. 2005, ch. 341, § 1, p. 1066.

Compiler's Notes. Section 2 of S.L. 2005, ch. 341 is compiled as § 47-1513.

CHAPTER 15

SURFACE MINING

SECTION.
47-1501. Purpose of chapter.
47-1502. Short title.
47-1503. Definitions.
47-1505. Duties and powers of board.
47-1506. Operator — Duties prior to operation — Submission of maps and plans.
47-1507. Plan — Approval or rejection by board — Hearing.
47-1508. Amended plan — Supplemental plan — Submission.

SECTION.
47-1512. Performance bond — Requisites.
47-1513. Operator's failure to comply — Forfeiture of bond — Penalties — Reclamation fund — Cyanidation closure fund.
47-1514. Appeal from final order — Procedure.
47-1517. Conduct of activities.
47-1518. Effective date — Application of chapter.

47-1501. Purpose of chapter. — It is the purpose of this chapter to provide for the protection of the public health, safety and welfare, through measures to reclaim the surface of all the lands within the state disturbed by exploration and surface mining operations and measures to assure the proper closure of cyanidation facilities and thereby conserve natural resources, aid in the protection of wildlife, domestic animals, aquatic resources, and reduce soil erosion.

History.
1971, ch. 206, § 1, p. 898; am. 1973, ch. 180, § 1, p. 415; am. 2005, ch. 167, § 3, p. 509.

Compiler's Notes. Sections 2 and 4 of S.L. 2005, ch. 167 are compiled as §§ 39-118A and 47-1502, respectively.

47-1502. Short title. — This act may be known and cited as "the Idaho surface mining act." The reclamation provisions of this act shall not apply to surface mining operations regulated by the Idaho dredge and placer mining protection act.

History.
1971, ch. 206, § 2, p. 898; am. 2005, ch. 167, § 4, p. 509.

Compiler's Notes. Sections 3 and 5 of S.L. 2005, ch. 167 are compiled as §§ 47-1501 and 47-1503, respectively.

47-1503. Definitions. — Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "Board" means the state board of land commissioners or such department, commission, or agency as may lawfully succeed to the powers and duties of such board.

(2) "Cyanidation" means the method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for the extraction.

(3) "Cyanidation facility" means that portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water.

(4) "Director" means the head of the department of lands or such officer as may lawfully succeed to the powers and duties of said director.

(5) "Affected land" means the land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds and other areas disturbed at the surface mining operation site.

(6) "Mineral" shall mean coal, clay, stone, sand, gravel, metalliferous and nonmetalliferous type of ores, and any other similar solid material or substance of commercial value to be excavated from natural deposits on or in the earth.

(7) "Surface mining operations" means the activities performed on a surface mine in the extraction of minerals from the ground, including the excavating of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, (a) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or (b) which, exclusive of exploration roads, result during a period of twelve (12) consecutive months in newly affected land consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of this chapter.

(8) "Exploration operations" means activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof.

(9) "Surface mine" means an area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed.

(10) "Mined area" means surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes.

(11) "Overburden" means material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles.

(12) "Overburden disposal area" means land surface upon which overburden is piled or planned to be piled.

(13) "Exploration drill holes" means holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof.

(14) "Exploration roads" means roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof.

(15) "Exploration trenches" means trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof.

(16) "Peak" means a projecting point of overburden.

(17) "Mine panel" means that portion of a mine designated by an operator as a panel of a surface mine on the map submitted pursuant to section 47-1506, Idaho Code.

(18) "Mineral stockpile" means minerals extracted during surface mining operations and retained at the surface mine for future rather than immediate use.

(19) "Permanent closure plan" means a description of the procedures, methods, and schedule that will be implemented to meet the intent and purposes of this chapter in treating and disposing of cyanide containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions.

(20) "Pit" means an excavation created by the extraction of minerals or overburden during surface mining operations.

(21) "Ridge" means a lengthened elevation of overburden.

(22) "Road" means a way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof.

(23) "Operator" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial including, but not limited to, every public or governmental agency engaged in surface mining or exploration operations or in operating a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of this chapter.

(24) "Hearing officer" means that person selected by the board to hear proceedings under section 47-1513, Idaho Code.

(25) "Final order of the board" means a written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available.

(26) "Tailings pond" means an area on a surface mine enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine.

History.
1971, ch. 206, § 3, p. 898; am. 1973, ch. 180, § 2, p. 415; am. 1974, ch. 17, § 35, p. 308; am. 2005, ch. 167, § 5, p. 509.

Compiler's Notes. Sections 4 and 6 of S.L. 2005, ch. 167 are compiled as §§ 47-1502 and 47-1505, respectively.

47-1505. Duties and powers of board. — In addition to the other duties and powers of the board prescribed by law, the board is granted and shall be entitled to exercise the following authority and powers and perform the following duties:

(1) To administer and enforce the provisions of this chapter and the rules and orders promulgated thereunder as provided in this chapter.

(2) To conduct and promote the coordination and acceleration of research, studies, surveys, experiments, demonstrations and training in carrying out the provisions of this chapter. In carrying out the activities authorized by this section, the board may enter into contracts with and make grants to institutions, agencies, organizations and individuals, and shall collect and make available any information obtained therefrom.

(3) To adopt and promulgate reasonable rules respecting the administration of this chapter and such rules as may be necessary to carry out the intent and purposes of this chapter, provided that no rules shall be adopted which require reclamation activities in addition to those set forth in this chapter. All such rules shall be adopted in accordance with and subject to the provisions of chapter 52, title 67, Idaho Code.

(4) To enter upon affected lands at all reasonable times, for the purpose of inspection, to determine whether the provisions of this chapter have been complied with. Such inspections shall be conducted in the presence of the operator or his duly authorized employees or representatives, and the operator shall make such persons available for the purpose of inspections.

(5) To reclaim affected land with respect to which a bond has been forfeited, and, in the board's discretion, with the permission of the landowner, to reclaim such other land which becomes affected land.

(6) To complete closure activities with respect to a cyanidation facility for which a permanent closure bond has been forfeited.

(7)(a) Upon receipt of a proposed reclamation or permanent closure plan or amended or supplemental plan, the director shall notify the cities and counties in which the surface mining operation or cyanidation facility is proposed. The notice shall include the name and address of the operator and shall describe the procedure and the schedule by which the plan may be approved or denied. This notification requirement shall not apply to exploration operations.

(b) Cities and counties may review the nonconfidential portions of the plan at the department's office and may provide comments to the director concerning the plan. Nothing in this section shall extend the time limit for the board to deliver to the operator a notice of rejection or approval of the plan or affect the confidentiality provisions of section 47-1515, Idaho Code.

(c) No city or county shall enact or adopt any ordinance, rule or resolution to regulate exploration or surface mining operations or a permanent closure plan in this state which conflicts with any provision of this chapter or the rules promulgated thereunder. This subpart shall not affect the planning and zoning authorities available to cities and counties pursuant to chapter 65, title 67, Idaho Code.

History.
1971, ch. 206, § 5, p. 898; am. 1988, ch. 223, § 1, p. 424; am. 1993, ch. 216, § 46, p. 587; am. 1995, ch. 364, § 1, p. 1274; am. 2005, ch. 167, § 6, p. 509.

Compiler's Notes. Sections 5 and 7 of S.L. 2005, ch. 167 are compiled as §§ 47-1503 and 47-1506, respectively.

47-1506. Operator — Duties prior to operation — Submission of maps and plans. — (a) Any operator desiring to conduct surface mining operations within the state of Idaho for the purpose of immediate or ultimate sale of the minerals in either the natural or processed state, shall submit to the board prior to commencing such surface mining operations a reclamation plan that contains the following:

(1) A map of the mine panel on which said operator desires to conduct surface mining operations, which sets forth with respect to said panel the following:

(i) The location of existing roads and anticipated access and main haulage roads planned to be constructed in conducting the surface mining operations.

(ii) The approximate boundaries of the lands to be utilized in the process of surface mining operations.

(iii) The approximate location and, if known, the names of all streams, creeks, or bodies of water within the area where surface mining operations shall take place.

(iv) The name and address of the person to whom notices, orders, and other information required to be given to the operator pursuant to this chapter may be sent.

(v) The drainage adjacent to the area where the surface is being utilized by surface mining operations.

(vi) The approximate boundaries of the lands that will become affected lands as a result of surface mining operations during the year immediately following the date that a reclamation plan is approved as to said panel, together with the number of acres included within said boundaries.

(vii) A description of foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices that will be used to control such nonpoint source impacts.

(viii) A description of foreseeable, site-specific impacts from acid rock drainage and the best management practices that will be used to mitigate the impacts, if any, from such acid rock drainage.

(2) Diagrams showing the planned location of pits, mineral stockpiles, overburden piles and tailings ponds on said panel.

(3) A description of the action which said operator intends to take to comply with the provisions of this chapter as to the surface mining operations conducted on such mine panel.

(b) Any operator who is not required to submit an operating plan for a surface mining operation to an entity of the federal government shall submit to the board, as part of the reclamation plan, an operating plan with regards to that surface mining operation. The operating plan shall include:

(1) Maps showing the location of existing roads and anticipated access and main haulage roads planned to be constructed for surface mining operations.

(2) The boundaries and acreage of the lands to be utilized in the process of surface mining operations.

(3) Maps showing the planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the surface mining operations.

(4) The location and, if known, the names of all streams, creeks, or bodies of water within the area where surface mining operations shall take place.

(5) The drainage adjacent to the area where the surface is being utilized by surface mining operations.

(6) The approximate boundaries and acreage of the lands that will become affected during the first year of construction of surface mining operations.

(7) The board shall promulgate rules or guidelines to allow the content of a nonfederal operating plan to be determined based upon the type and size of the surface mining operation.

(c) No operator who is required to submit an operating plan for a surface mining operation to an entity of the federal government shall be required to submit an operating plan to the board. This provision shall apply to all lands, regardless of surface or mineral ownership, covered by the operating plan submitted to the entity of the federal government.

(d) No operator shall commence surface mining operations on any mine panel without first having a reclamation plan approved by the state board of land commissioners.

(e) Any operator desiring to conduct exploration operations within the state of Idaho using motorized earth-moving equipment in order to locate minerals for immediate or ultimate sale in either the natural or the processed state shall notify the board by certified mail as soon after beginning exploration operations as possible and in any event within seven (7) days after beginning exploration operations. The letter shall include the following:

(1) The name and address of the operator;

(2) The location of the operation and the starting date and estimated completion date;

(3) The anticipated size of the operation, and the general method of operation.

The letter shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(f) Any operator desiring to operate a cyanidation facility within the state of Idaho shall submit to the board prior to the operation of such a facility a permanent closure plan that contains the following:

(1) The name and address of the operator;

(2) The location of the operation;

(3) The objectives, methods and procedures the operator will use to attain permanent closure;

(4) An estimate of the cost of attaining permanent closure as well as an estimate of the costs to achieve critical phases of the closure plan;

(5) Any other information specified in the rules adopted to carry out the intent and purposes of this chapter.

(g) The board may require a reasonable fee for reviewing and approving a permanent closure plan. The fee may include the reasonable cost to employ a qualified independent party, acceptable to the operator and the board, to verify the accuracy of the cost estimate required in subsection (f)(4) of this section.

(h) The board shall coordinate its review of activities in the permanent closure plan under the statutory responsibility of the department of environmental quality with that department, but that coordination shall not extend the time limit in which the board must act on a plan submitted.

(i) No operator shall commence operation of a cyanidation facility without first having a permanent closure plan approved by the board.

History.
1971, ch. 206, § 6, p. 898; am. 1973, ch. 180, § 3, p. 415; am. 1990, ch. 213, § 65, p. 480; am. 1997, ch. 269, § 1, p. 772; am. 2005, ch. 167, § 7, p. 509; am. 2006, ch. 16, § 5, p. 42.

Compiler's Notes. Sections 6 and 8 of S.L. 2005, ch. 167 are compiled as §§ 47-1505 and 47-1507, respectively.

The 2006 amendment, by ch. 16, substituted "subsection (f)(4)" for "subsection (f)(3)" near the end of subsection (g).

47-1507. Plan — Approval or rejection by board — Hearing. — (a) Upon determination by the board that a reclamation or permanent closure plan or any amended plan submitted by an operator meets the requirements of this chapter, the board shall deliver to the operator, in writing, a notice of approval of such plan, and thereafter said plan shall govern and determine the nature and extent of the obligations of the operator for compliance with this chapter, with respect to the mine panel or cyanidation facility for which the plan was submitted.

(b) If the board determines that a reclamation or permanent closure plan or amended plan fails to fulfill the requirements of this chapter, it shall deliver to the operator, in writing, a notice of rejection of the plan and shall set forth in said notice of rejection the reasons for such rejection, the factual findings upon which such rejection is based, the manner in which the plan fails to fulfill said requirements, and the requirements necessary to comply with this chapter. Upon receipt of said notice of rejection, said operator may submit amended plans. Upon further determination by the board that the amended plan still does not fulfill the requirements of said section, it shall

deliver to the operator, in writing, a notice of rejection of the amended plan in the same form as set out above.

(c) Weather permitting, the board shall deliver to the operator within sixty (60) days after the receipt of any reclamation plan or amended reclamation plan, or within one hundred eighty (180) days after the receipt of any permanent closure plan or amended permanent closure plan the notice of rejection or notice of approval of said plan, as the case may be, provided, however, that if the board fails to deliver a notice of approval or notice of rejection within said time period, the plan submitted shall be deemed to comply with this chapter, and the operator may commence and conduct his surface mining operations on the mine panel or operate the cyanidation facility covered by such plan as if a notice of approval of said plan had been received from the board; provided, however, that if weather conditions prevent the board from inspecting the mine panel or cyanidation facility to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(d) For the purpose of determining whether a proposed plan or amended or supplemental plan complies with the requirements of this chapter, the board may, in its discretion, call for a public hearing. The hearing shall be held under such rules as promulgated by the board. Any interested person may appear at the hearing and give testimony. At the discretion of the board, the director may conduct the hearing and transmit a summary thereof to the board. Any hearing held shall not extend the period of time limit in which the board must act on a plan submitted.

History.
1971, ch. 206, § 7, p. 898; am. 1997, ch. 269, § 2, p. 772; am. 2005, ch. 167, § 8, p. 509.

Compiler's Notes. Sections 7 and 9 of S.L. 2005, ch. 167 are compiled as §§ 47-1506 and 47-1508, respectively.

47-1508. Amended plan — Supplemental plan — Submission. — (a) In the event that a material change in circumstances arises which the operator, or the board, believes requires a change in an approved plan, including any amended plan, then the operator shall submit to the board a supplemental plan setting forth the proposed changes and the board shall likewise set forth its proposed changes and stating the reasons therefor. Upon determination by the board that a supplemental plan or any amended supplemental plan submitted by the operator meets the requirements of this chapter, it shall deliver to the operator, in writing, a notice of approval of said supplemental plan, and thereafter said supplemental plan shall govern and determine the nature and extent of the obligations of the operator for compliance with respect to the mine panel or cyanidation facility for which the plan was submitted.

(b) If the board determines that a supplemental plan fails to fulfill the requirements of this chapter, it shall deliver to the operator, in writing, a notice of rejection of the supplemental plan and shall set forth in said notice of rejection the manner in which said plan fails to fulfill said requirements and shall stipulate the corrective requirements necessary to comply with said sections. Upon receipt of said notice of rejection, the operator may

submit amended supplemental plans. Upon further determination by the board that an amended supplemental plan does not fulfill the requirements of said sections, it shall deliver to the operator, in writing, a notice of rejection of amended supplemental plan, and shall set forth in said notice of rejection the manner in which such amended supplemental plan fails to fulfill said requirements, and shall stipulate the requirements necessary to comply with said sections.

(c) The board shall, weather permitting, deliver to the operator within sixty (60) days after the receipt of any supplemental reclamation plan or amended supplemental reclamation plan, or within one hundred eighty (180) days after the receipt of any supplemental permanent closure plan or amended supplemental permanent closure plan, the notice of rejection, setting forth in detail the reasons for such rejection and the factual findings upon which such rejection is based, or notice of approval of said plan as the case may be, provided, however, that if the board fails to deliver a notice of approval or notice of rejection within said time period, the plan submitted shall be deemed to comply with this chapter and the operator may commence and conduct or continue, as the case may be, his surface mining operations or operate the cyanidation facility as if a notice of approval of said plan had been received from the board. If weather conditions prevent the board from inspecting the mine panel or cyanidation facility to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(d) If an operator determines that unforeseen events or unexpected conditions require immediate changes in or additions to an approved reclamation or permanent closure plan, the operator may continue operations in accordance with the procedures dictated by the changed conditions, pending submission and approval of a supplemental plan, even though such operations do not comply with the approved plan, provided, however, that nothing herein stated shall be construed to excuse the operator from complying with the reclamation requirements of sections 47-1509 and 47-1510, Idaho Code, of this chapter or from the applicable closure requirements of a permit issued under section 39-118A, Idaho Code. Notice of such unforeseen events or unexpected conditions shall be given to the board within ten (10) days after discovery thereof, and a proposed supplemental plan shall be submitted within thirty (30) days after discovery thereof.

History.
1971, ch. 206, § 8, p. 898; am. 1997, ch. 269, § 3, p. 772; am. 2005, ch. 167, § 9, p. 509.

Compiler's Notes. Sections 8 and 10 of S.L. 2005, ch. 167 are compiled as §§ 47-1507 and 47-1512, respectively.

47-1512. Performance bond — Requisites. — (a) Prior to conducting any surface mining operations on a mine panel covered by an approved reclamation plan or operating a cyanidation facility covered by an approved permanent closure plan, an operator shall submit to the board a bond meeting the requirements of this section.

(1) The penalty of the initial reclamation bond filed prior to conducting any surface mining operations on a mine panel shall be in an amount

determined by the board to be the estimated reasonable costs of reclamation required in this chapter, in the event of failure to reclaim by an operator, of affected lands proposed to be mined during the next calendar year plus ten percent (10%) of such costs as to the acreage of affected land designated by the operator pursuant to section 47-1506(a)(1)(vi), Idaho Code, and subsection (b) of this section.

(2) The penalty of the initial permanent closure bond filed prior to operating a cyanidation facility shall be in an amount determined by the board to be the estimated reasonable costs to complete the activities specified in the permanent closure plan required in this chapter, in the event of the failure of an operator to complete those activities, plus ten percent (10%) of such costs. In setting the bond amount, the board shall avoid duplication with bonds and sureties deposited with other governmental agencies.

(3) The determination of the bond amount shall constitute a final decision subject to judicial review as set forth in subsection (a) of section 47-1514, Idaho Code. In lieu of any bond required hereunder, the operator may deposit cash and governmental securities with the board, in an amount equal to that of the required bond, on the conditions as prescribed in this section.

(b) Prior to the time that lands designated to become affected lands on a mine panel, in addition to those designated pursuant to section 47-1506(a)(1)(vi), Idaho Code, become affected land, the operator shall submit to the board a bond meeting the requirements of section 47-1512(c), Idaho Code, and the penalty of such bond shall be in the amount necessary to insure the performance of the duties of the operator under this chapter as to such affected lands actually proposed to be mined within the next calendar year. If additional acreage is subsequently proposed to be mined by an operator, the penalty of such bond shall be in an amount determined by the board to be the estimated reasonable costs of reclamation required by this chapter, in the event of failure to reclaim by an operator, of affected lands proposed to be mined during the next calendar year plus ten percent (10%) of such costs.

(c) Except as provided in this subsection, no bond for reclamation submitted pursuant to this chapter shall exceed two thousand five hundred dollars ($2,500) for any given acre of such affected land. The board may require a bond in excess of two thousand five hundred dollars ($2,500) for any given acre of affected land only when the following conditions have been met:

(1) The board has determined that such bond is necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code.

(2) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary.

(3) The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed bond. The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived, in writing, by the operator.

Any hearing held shall, at the discretion of the director, extend the time, up to thirty (30) days, in which the board must act on a plan submitted.

(d) Except as provided in this subsection, no bond submitted for permanent closure of a cyanidation facility pursuant to this chapter shall exceed five million dollars ($5,000,000). The board may require a bond in excess of five million dollars ($5,000,000) for a cyanidation facility only when the following conditions have been met:

(1) The board has determined that such bond is necessary to meet the requirements of this chapter.

(2) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary.

(3) The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed bond. The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived, in writing, by the operator. Any hearing held shall, at the discretion of the director, extend the time, up to sixty (60) days, in which the board must act on the permanent closure plan submitted.

(e) Any bond required under this chapter to be filed and maintained with the board shall be in such form as the board prescribes, payable to the state of Idaho, conditioned that the operator shall faithfully perform all requirements of this chapter and comply with all rules of the board in effect as of the date of approval of the plan in accordance with the provisions of this chapter. An operator may at any time file a single bond in lieu of separate bonds filed or to be filed pursuant to this chapter, provided that the penalty of such single bond shall be equal to the total of the penalties of the separate bonds being combined into a single bond. Further, any bond provided to another governmental agency that also meets the requirements in this section shall be deemed to be sufficient surety for the purposes of this chapter.

(f) A bond filed as above prescribed shall not be canceled by the surety, except after not less than ninety (90) days' notice to the board. Upon failure of the operator to make substitution of surety prior to the effective date of cancellation of the bond or within thirty (30) days following notice of cancellation by the board, whichever is later, the board shall have the right to issue a cease and desist order and seek injunctive relief to stop the operator from conducting operations covered by such bond until such substitution has been made.

(g) If the license to do business in this state of any surety, upon a bond filed with the board pursuant to this chapter, shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the board, shall substitute for such surety a good and sufficient corporate surety licensed to do business in this state or other surety acceptable to the board. Upon failure of the operator to make substitution of surety, the board shall have the right to issue a cease and desist order and seek injunctive relief to stop the operator from conducting operations covered by such bond until such substitution has been made.

(h) When an operator shall have completed all reclamation requirements under the provisions of this chapter as to any affected land, he shall notify

the board. Within thirty (30) days after the receipt of such notice, the board shall notify the operator as to whether or not the reclamation performed meets the requirements of the reclamation plan pertaining to the land in question. Upon the determination by the board that the requirements of the reclamation plan in question have been met as to said lands, the amount of bond in effect as to such lands shall be reduced by an amount designated by the board to reflect the reclamation done.

(i) When an operator shall have completed an activity specified in an approved permanent closure plan he may notify the board. Within thirty (30) days after the receipt of such notice, the board shall notify the operator as to whether or not the activity performed meets the requirements of the permanent closure plan. In determining whether or not an activity under the statutory responsibility of the department of environmental quality meets the requirements of the permanent closure plan, the board shall consult with that department. Upon the determination by the board that the activity meets the requirements of the permanent closure plan, the bond for permanent closure shall be reduced by an amount designated by the board to reflect the activity completed.

(j) An operator may withdraw any land previously designated as affected land within a mine panel, provided that it is not already affected land, and in such event, he shall notify the board and the amount of the bond in effect as to the lands in that mine panel shall be reduced by an amount designated by the board as the amount which would have been necessary to reclaim such lands.

History.
1971, ch. 206, § 12, p. 898; am. 1980, ch. 206, § 1, p. 471; am. 1985, ch. 123, § 1, p. 304; am. 1988, ch. 223, § 2, p. 424; am. 1997, ch. 269, § 4, p. 772; am. 2005, ch. 167, § 10, p. 509.

Compiler's Notes. Sections 9 and 11 of S.L. 2005, ch. 167 are compiled as §§ 47-1508 and 47-1513, respectively.

47-1513. Operator's failure to comply — Forfeiture of bond — Penalties — Reclamation fund — Cyanidation closure fund. — (a) Whenever the board determines that an operator has not complied with the provisions of this chapter, the board may notify the operator of such noncompliance, and may by private conference, conciliation, and persuasion, endeavor to remedy such violation. In the event of a violation referred to in subsections (d) and (e) of this section, the board may proceed without an administrative action, hearing or decision to exercise the remedies set forth in said subsections. Additionally, no administrative action, hearing or decision shall be required from the Idaho board of environmental quality prior to the board proceeding under subsections (d) and (e) of this section. In the event of the failure of any conference, conciliation and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which shall specify the provisions of this chapter which the operator allegedly is violating, and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this chapter. Such complaint may be served by certified mail, and return receipt

signed by the operator, an officer of a corporate operator, or the designated agent of the operator shall constitute service. The operator shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the operator fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the operator, and the board may proceed to cancel the reclamation or permanent closure plan and forfeit the bond in the amount necessary to reclaim affected lands or complete the permanent closure activities. Upon request for a hearing by an operator, the board shall schedule a hearing before a hearing officer appointed by the board at a time not less than thirty (30) days after the date the operator requests a hearing. The board shall issue subpoenas at the request of the director of the department of lands and at the request of the charged operator, and the matter shall be otherwise handled and conducted in accordance with chapter 52, title 67, Idaho Code. The hearing officer shall, pursuant to said hearing, enter an order in accordance with chapter 52, title 67, Idaho Code, which, if adverse to the operator, shall designate a time period within which corrective action should be taken. The time period designated shall be long enough to allow the operator, in the exercise of reasonable diligence, to rectify any failure to comply designated in said order. In the event that the operator takes such action as is necessary to comply with the order within the time period designated in said order, no further action shall be taken by the board to compel performance under the chapter.

(b) Upon request of the board, the attorney general shall institute proceedings to have the bond of an operator forfeited for the violation by the operator of an order entered pursuant to this section.

(c) The forfeiture of such bond shall fully satisfy all obligations of the operator to reclaim the affected land or complete permanent closure activities under the provisions of this chapter. If the violation involves an operator that has not furnished a bond required by this chapter, or an operator that is not required to furnish a bond pursuant to this chapter, or an operator who violates this chapter by performing an act not included in the original approved reclamation plan or the original approved permanent closure plan, and such departure from the plan is not subsequently approved, such operator shall be subject to a civil penalty for his failure to comply with such order in the amount determined by the board to be the anticipated cost of reasonable reclamation of affected lands or permanent closure of the cyanidation facility. Nothing in this subsection shall relieve the operator of any obligation, including the obligation to complete closure requirements, pursuant to a permit issued by the department of environmental quality under section 39-118A, Idaho Code, or limit that department's authority to require compliance with such permit requirements.

(d) Notwithstanding any other provisions of this chapter, the board may commence an action without bond or undertaking, in the name of the state of Idaho to enjoin any operator who is conducting operations without an approved plan required by section 47-1506, Idaho Code, or without the bond required by this chapter. The court, or a judge thereof at chambers, if

satisfied from the complaint or by affidavits that such acts have been or are being committed, shall issue a temporary restraining order without notice or bond, enjoining the defendant, his agents, and employees from conducting such operations without said plan or bond. Upon a showing of good cause therefor, the temporary restraining order may require the defendant to perform reclamation of the mined area in conformity with sections 47-1509 and 47-1510, Idaho Code, or to complete permanent closure activities, pending final disposition of the action. The action shall then proceed as in other cases for injunctions. If it is established at trial that the defendant has operated without an approved plan or bond, the court shall enter, in addition to any other order, a decree enjoining the defendant, his agents and employees from thereafter conducting such activities or similar actions in violation of this chapter. The board may, in conjunction with its injunctive procedures, proceed in the same or in a separate action to recover from an operator who is conducting surface mining or exploration operations or operating a cyanidation facility without the required plan or bond, the cost of performing the reclamation activities required by sections 47-1509 and 47-1510, Idaho Code, or the cost of permanent closure activities from any such operator who has not filed a bond to cover the cost of the required activities.

(e) Notwithstanding any other provision of this chapter, the board may, without bond or undertaking and without any administrative action, hearing or decision, commence an action in the name of the state of Idaho (1) to enjoin a permitted surface mining operation or cyanidation facility when, under an existing approved plan, an operator violates the terms of the plan and where immediate and irreparable injury, loss or damage may result to the state and (2) to recover the penalties and to collect civil damages provided for by law.

(f) In addition to the procedures set forth in subsections (a), (d) and (e) of this section, and in addition to the civil penalty provided in subsection (c) of this section, any operator who violates any of the provisions of this chapter or rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this chapter, shall be liable to a civil penalty of not less than five hundred dollars ($500) nor more than two thousand five hundred dollars ($2,500) for each day during which such violation continues, and in addition may be enjoined from continuing such violation. Such penalties shall be recoverable in an action brought in the name of the state of Idaho by the attorney general in the district court for the county where the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides.

(1) All sums recovered related to the reclamation provisions of this chapter shall be placed in the state treasury and credited to the surface mining reclamation fund, which is hereby created, to be used to reclaim affected lands and to administer the reclamation provisions of this chapter.

(2) All sums recovered related to the cyanidation facility closure provisions of this chapter shall be placed in the state treasury and credited to

the cyanidation facility closure fund, which is hereby created. Moneys in the fund may be expended pursuant to appropriation and used to complete permanent closure activities and to administer the permanent closure provisions of this chapter.

(g) Any person who willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or willfully fails, neglects, or refuses to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) or imprisonment not to exceed one (1) year or both.

(h) Reclamation plans approved by the board as of January 1, 1997, shall be deemed to be in full compliance with the requirements of this chapter. However, the board may periodically review, and revise if necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code, the amount, terms and conditions of any bond when there is a material change in the reclamation plan or a material change in the estimated reasonable costs of reclamation determined pursuant to section 47-1512, Idaho Code. Any revision to the amount, terms and conditions of a bond due to a material change in the reclamation plan shall apply only to the affected lands covered by the material change in the reclamation plan.

(i) A cyanidation facility with an existing permit approved by the department of environmental quality under section 39-118A, Idaho Code, as of July 1, 2005, shall be deemed to be in full compliance with the requirements of this chapter. If there is a material modification or a material expansion of a cyanidation facility after July 1, 2005, the provisions of this chapter shall apply to the modification or expansion. Provided however, that reclamation or closure related activities at a facility with an existing cyanidation permit that did not actively add cyanide after January 1, 2005, shall not be considered to be material modifications or a material expansion of the facility.

(j) For a permanent closure plan approved by the board after July 1, 2005, the board shall periodically review, and revise if necessary to meet the requirements of this chapter, the amount, terms and conditions of any bond when there is a material change in the permanent closure plan or a material change in the estimated reasonable costs of permanent closure determined pursuant to section 47-1512, Idaho Code. The board may require a fee sufficient to employ a qualified independent party, acceptable to the operator and the board, to verify any revised estimate of the reasonable costs of permanent closure.

History.

1971, ch. 206, § 13, p. 898; am. 1973, ch. 180, § 5, p. 415; am. 1974, ch. 17, § 37, p. 308; am. 1985, ch. 123, § 2, p. 304; am. 1988, ch. 223, § 3, p. 424; am. 1993, ch. 216, § 47, p. 587; am. 1997, ch. 269, § 5, p. 772; am. 2001, ch. 103, § 88, p. 253; am. 2005, ch. 167, § 11, p. 509; am. 2005, ch. 341, § 2, p. 1006; am. 2006, ch. 37, § 1, p. 101.

Compiler's Notes. This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 167, substituted "this chapter" for "this act" throughout the section; in subsection (a) inserted "or permanent closure" and "or complete the permanent closure activities" in the seventh sentence; in subsection (c), inserted "or complete permanent closure activities," in the first sentence, inserted "or the original approved per-

manent closure plan" in the second sentence, and added the last sentence; in subsection (d), inserted "or to complete permanent closure activities" near the end of the second sentence and inserted "or operating a cyanidation facility" and "or the cost of permanent closure activities" in the last sentence; in subsection (e), inserted "or cyanidation facility" near the middle of the sentence; and added subsections (i) and (j).

The 2005 amendment, by ch. 341, added "cyanidation closure fund" at the end of the catchline, substituted "this chapter" for "this act" throughout the section and, in subsection (f), designated the former last sentence as paragraph (1) and added paragraphs (2) and (3).

Sections 10 and 12 of S.L. 2005, ch. 167 are compiled as §§ 47-1512 and 47-1514, respectively.

Section 1 of S.L. 2005, ch. 341 is compiled as § 47-1206.

The 2006 amendment, by ch. 37, deleted former subsection (f)(3) which read: "Any unencumbered and unexpended balances in the surface mining reclamation fund and the cyanidation facility closure fund remaining at the end of a fiscal year shall not lapse but shall be carried forward until expended or modified by subsequent statute".

47-1514. Appeal from final order — Procedure. — (a) Any operator dissatisfied with any final order of the board made pursuant to this chapter may, within sixty (60) days after notice of such order, obtain judicial review thereof by appealing to the district court of the state of Idaho for the county wherein the operator resides or has a place of business, or to the district court for the county in which the cyanidation facility or the land or any portions thereof affected by the order is located. Such appeal shall be perfected by filing with the clerk of such court, in duplicate, a notice of appeal, together with a complaint against the board, in duplicate, which shall recite the prior proceedings before the board or hearing officer, and shall state the grounds upon which the petitioner claims he is entitled to relief. A copy of the summons and complaint shall be delivered to the board or such person or persons as the board may designate to receive service of process. The clerk of the court shall immediately forward a copy of the notice of appeal and complaint to the board, which shall forthwith prepare, certify and file in said court, a true copy of any decision, findings of fact, conclusions or order, together with any pleadings upon which the case was heard and submitted to the board or hearing officer, and shall, upon order of the court, provide transcripts of any record, including all exhibits and testimony of any proceedings in said matter before the board or any of its subordinates. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits, including, but not limited to, the rights of appeal to the supreme court of the state of Idaho.

(b) When the board finds that justice so requires, it may postpone the effective date of a final order made, pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings.

(c) Notwithstanding any other provision of this chapter concerning administrative or judicial proceedings, whenever the board determines that an operator has not complied with the provisions of this chapter, the board may file a civil action in the district court for the county wherein the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides. The board may request the court to issue an appropriate order to remedy the violation. The right of appeal to the supreme court of the state of Idaho shall be available.

History.
1971, ch. 206, § 14, p. 898; am. 1973, ch. 180, § 6, p. 415; am. 2005, ch. 167, § 12, p. 509.

Compiler's Notes. Sections 11 and 13 of S.L. 2005, ch. 167 are compiled as §§ 47-1513 and 47-1517, respectively.

47-1517. Conduct of activities. — (a) An operator shall conduct all exploration and mining operations in accordance with all applicable statutes and regulations pertaining to water use and mining safety applicable to exploration and surface mining operations.

(b) An operator desiring to operate a cyanidation facility within the state of Idaho shall conduct all related activities in accordance with all applicable statutes and rules related to cyanidation including, but not limited to, section 39-118A, Idaho Code.

History.
1971, ch. 206, § 17, p. 898; am. 2005, ch. 167, § 13, p. 509.

Compiler's Notes. Sections 12 and 14 of S.L. 2005, ch. 167 are compiled as §§ 47-1514 and 47-1518, respectively.

47-1518. Effective date — Application of chapter. — The reclamation provisions of this chapter shall be in full force and effect on and after May 31, 1971. An operator shall not be required to perform the reclamation activities referred to in this chapter as to any surface mining operations performed prior to May 31, 1972, and further, shall not be required to perform such reclamation activities as to any pit or overburden pile as it exists prior to May 31, 1972. The cyanidation provisions of this chapter shall be in full force and effect on and after July 1, 2005. The board shall promulgate temporary rules by August 1, 2005, to implement the provisions of this act.

History.
1971, ch. 206, § 19, p. 898; am. 2005, ch. 167, § 14, p. 509.

Compiler's Notes. Sections 13 and 15 of S.L. 2005, ch. 167 are compiled as §§ 47-1517 and 42-202B, respectively.

CHAPTER 16

GEOTHERMAL RESOURCES

SECTION.
47-1601. Geothermal resources — Land leases — Authorization.
47-1604. Leased area.
47-1605. Leases — Rental and royalty.
47-1608. Bonding.

47-1601. Geothermal resources — Land leases — Authorization. — The state board of land commissioners is hereby authorized and empowered to issue geothermal resource leases for terms of up to forty-nine (49) years on any state or school lands which may contain geothermal resources, together with the right to use and occupy so much of the surface of said land as may be required for all purposes reasonably incident to the prospecting for, exploration for, drilling or other well construction for, and production of geothermal resources.

History.
I.C., § 47-1601, as added by 1972, ch. 182, § 1, p. 467; am. 2011, ch. 61, § 1, p. 137.

Compiler's Notes. The 2011 amendment, by ch. 61, substituted "issue geothermal resource leases for terms of up to forty-nine (49) years on any state" for "lease for a term of ten (10) years, and as long thereafter as geothermal resources are produced in paying quantities, or as much longer thereafter as the lessee in good faith shall conduct geothermal resource well drilling or construction operations, thereon, or for such lesser term as it finds to be in the public interest, any state."

47-1604. Leased area. — The surface area covered by a geothermal lease issued pursuant to this chapter shall be determined by the state board of land commissioners.

History.
I.C., § 47-1604, as added by 1972, ch. 182, § 1, p. 467; am. 2011, ch. 63, § 1, p. 138.

Compiler's Notes. The 2011 amendment, by ch. 63, rewrote the section, which formerly read: "No single geothermal resource lease issued under this chapter shall be for an area exceeding one (1) section, provided that any one (1) person may hold more than one lease."

47-1605. Leases — Rental and royalty. — (1) Geothermal resources leases shall be issued at an annual rental of not less than twenty-five cents (25¢) per acre, payable in advance. The rental specified in geothermal leases shall be fixed in any manner by the state board of land commissioners including, but not limited to, competitive bidding, negotiation, fixed amounts or formulas.

(2) Royalty shall be established by the board of land commissioners based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases shall be fixed in any manner by the state board of land commissioners including, but not limited to, competitive bidding, negotiation, fixed amounts or formulas. Royalties shall be paid in addition to rental payments, at the discretion of the board of land commissioners.

History.
I.C., § 47-1605, as added by 1972, ch. 182, § 1, p. 467; am. 1985, ch. 124, § 1, p. 308; am. 2011, ch. 62, § 1, p. 137.

Compiler's Notes. The 2011 amendment, by ch. 62, rewrote this section, which formerly read: "Geothermal resources leases shall be issued at an annual rental of not less than twenty-five cents (25¢) per acre, payable in advance and a royalty which shall not be less than ten per centum (10%) of the geothermal resources produced from the lands under lease or the value thereof. The rentals and the royalties specified in geothermal leases shall be fixed in any manner, including but not limited to competitive bidding, or according to any formula as the state board of land commissioners finds will maximize public benefits from such leases. Royalties shall be paid in addition to rental payments, at the discretion of the board of land commissioners."

47-1608. Bonding. — The board shall require the execution of good and sufficient bonds in amounts the board determines reasonable for reclamation and all damages to the land surface and improvements thereon, whether or not the lands have been sold or leased for any other purpose. These bonds shall not duplicate bonds for well closure held by the Idaho department of water resources.

History.
I.C., § 47-1608, as added by 1972, ch. 182, § 1, p. 467; am. 1993, ch. 289, § 1, p. 1081; am. 2011, ch. 64, § 1, p. 138.

Compiler's Notes. The 2011 amendment, by ch. 64, rewrote the section, which formerly read: "**Bond.** (1) The board shall require the execution of a good and sufficient bond in an

amount the board determines reasonable, which shall not be less than one thousand dollars ($1,000) in favor of the state of Idaho conditioned upon the payment of all damages to the land surface and improvements thereon, whether or not the lands have been sold or leased for any other purpose.

"(2) Upon commencement of operations for the drilling of any geothermal resource well, the lessee shall be required by the board to furnish such a bond as the board determines reasonable which shall not be less than six thousand dollars ($6,000) which bond shall be in lieu of the bond required in subsection (1) of this section and shall cover all subsequent operations on such lease."

CHAPTER 17

IDAHO ABANDONED MINE RECLAMATION ACT

SECTION.

47-1703. Funding.

47-1703. Funding. — This chapter shall govern the use of state and federal moneys specifically appropriated for abandoned mine reclamation. This chapter shall not require the state to expend or appropriate state moneys. The board may receive federal funds, state funds, and any other funds, and, within the limits imposed by a specific grant, expend them as directed by this chapter. All grants, funds, fees, fines, penalties and other uncleared money which has been or will be paid to the state for abandoned mine reclamation shall be placed in the state treasury and credited to the abandoned mine reclamation fund, which is hereby created. This fund shall be available to the board, by legislative appropriation, and shall be expended for the reclamation of lands affected by eligible mining operations.

History.

I.C., § 47-1703, as added by 1994, ch. 220, § 1, p. 702; am. 1999, ch. 44, § 5, p. 105; am. 2006, ch. 37, § 2, p. 101.

Compiler's Notes. The 2006 amendment, by ch. 37, substituted "fund" for "account" in the third and fourth sentences, and deleted the former last sentence which read: "Any unencumbered and unexpended balance of this account remaining at the end of a fiscal year shall not lapse but shall be carried forward for the purposes of this chapter until expended or until modified by subsequent statute."

TITLE 48

MONOPOLIES AND TRADE PRACTICES

CHAPTER.
1. Idaho Competition Act, § 48-107.
4. Unfair Sales Act, §§ 48-405A, 48-406.
5. Registration and Protection of Trademarks, §§ 48-504, 48-506, 48-510.
6. Consumer Protection Act, §§ 48-603F, 48-608.
7. Shoplifting, § 48-702.
10. Idaho Telephone Solicitation Act, §§ 48-1002, 48-1003A — 48-1003C.

CHAPTER 1

IDAHO COMPETITION ACT

SECTION.
48-107. Exempt activities.

48-101. Short title.

Retroactivity.

Retroactive application of a statute is not allowed unless there is clear legislative intent to that effect; the language of the Idaho Competition Act indicates that it does not apply retroactively to permit the recovery of damages based upon conduct that occurred before its effective date. State v. Daicel Chem. Indus., Ltd., 141 Idaho 102, 106 P.3d 428 (2005).

Collateral References. Right of retail buyer of price-fixed product to sue manufacturer on state antitrust claim. 35 A.L.R.6th 245.

48-104. Unreasonable restraint of trade or commerce.

Analysis

Bid rigging.
Purpose.

Bid Rigging.

Because an agreement not to bid at a sale of county-owned land at public auction constituted illegal bid rigging under this section and § 1 of the Sherman Act, 15 U.S.C.S. § 1, the agreement was unenforceable, and a jury's award of damages for breach of the agreement was overturned. Pines Grazing Ass'n v. Flying Joseph Ranch, LLC, 151 Idaho 924, 265 P.3d 1136 (2011).

Purpose.

This section requires a claimant to show a purpose to drive another out of business, reflecting the notion that unfair competition laws were enacted to protect competition, not competitors. This section strikes the balance between free competition and fair competition by offering relief only where a company can show a competitor's intent to drive the company out of business, rather than simply an intent to compete. Wesco Autobody Supply, Inc. v. Ernest, 149 Idaho 881, 243 P.3d 1069 (2010).

48-107. Exempt activities. — (1) No provision of this chapter shall be construed to prohibit:

(a) Activities that are exempt from the operation of the federal antitrust laws.

(b) Activities required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.

(c) Activities of a municipality or its officers or employees acting in an

official capacity, to the extent that those activities are authorized or directed by state law.

(d) The existence of, or membership in, organizations instituted for the purpose of mutual help and not having capital stock or conducted for profit; nor shall the provisions of this act forbid or restrain individual members of such organizations from lawfully carrying out legitimate objectives of the organization.

(e) Activities of any labor organization, individual members of the labor organization, or group of labor organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed predominantly to labor objectives which are permitted under the laws of this state or of the United States.

(2) Persons engaged in the production of agricultural products may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling and marketing the products of these persons, to the extent permitted under the laws of this state or of the United States. These associations may have marketing agencies in common and such associations and their members may make the necessary contracts and agreements to effect such purposes. However, such associations must conform to the requirements of chapter 26, title 22, Idaho Code, or alternatively satisfy the following requirements:

(a) Operate for the mutual benefit of the members thereof, as producers;

(b) Not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members; and

(c) Conform to one (1) or both of the following:

(i) That no member of the association is allowed more than one (1) vote because of the amount of stock or membership capital he may own therein; or

(ii) That the association does not pay dividends on stock or membership capital in excess of eight percent (8%) per annum.

History.

I.C., § 48-107, as added by 2000, ch. 148, § 3, p. 377; am. 2011, ch. 244, § 1, p. 656.

Compiler's Notes. The 2011 amendment, by ch. 244, added "or alternatively satisfy the following requirements" at the end of the introductory paragraph in subsection (2) and added paragraphs (2)(a) through (2)(c).

Section 2 of S.L. 2011, ch. 244 declared an emergency retroactively to July 1, 2000. Approved April 7, 2011.

Applicability.

In regulating the collection of solid waste within its city limits, a municipality is exercising its police power function under Idaho Const., art. XII, § 2, and under paragraph (1)(c) of this section, it is afforded a statutory exemption from the Idaho competition act, and since § 50-344 does not conflict with granting exclusive solid waste collection franchises, this exercise is valid. Plummer v. City of Fruitland, 139 Idaho 810, 87 P.3d 297 (2004).

48-113. Private causes of action.

Collateral References. Right of retail buyer of price-fixed product to sue manufacturer on state antitrust claim. 35 A.L.R.6th 245.

CHAPTER 4

UNFAIR SALES ACT

SECTION.
48-405A. Limitation of quantity of items offered for sale at retail prohibited. [Repealed.]
SECTION.
48-406. Injunctions.

48-405A. Limitation of quantity of items offered for sale at retail prohibited. [Repealed.]

Compiler's Notes. This section, which comprised I.C., § 48-405A, as added by 1969, ch. 239, § 2, p. 755, was repealed by S.L. 2009, ch. 146, § 1.

48-406. Injunctions. — (1) Parties Authorized to Bring. Any person, municipal or other public corporation, or the state of Idaho, may maintain an action to enjoin a continuance of any act or acts in violation of this act.

(2) Authority to Issue. If it appears to the court upon any application for a temporary injunction, or upon the hearing for any order to show cause why a temporary injunction should not be issued, or, if the court shall find, in any such action, that any defendant therein is violating, or has violated, this act, then the court shall enjoin the defendant from doing all acts which are prohibited in said act.

(3) Restraints Which May Be Included. The court may, in its discretion, include in any injunction against a violation of this act such other restraints as it may deem expedient in order to deter the defendant therefrom, and insure against his committing a future violation of this act.

(4) Article or Products Covered. Any injunction against a violation of this act, whether temporary or final, shall cover every article or product handled or sold by the defendant and not merely the particular article or product involved in the pending action.

(5) Undertaking or Bond. As a condition to the granting of a temporary injunction under this act, the court may require of the plaintiff, excepting when a municipal or public corporation or the state of Idaho is the plaintiff, a written undertaking in such sum as the court deems reasonable and proper in the premises, with sufficient sureties to the effect that the plaintiff will pay to the person enjoined such costs and damages, not exceeding an amount specified in said undertaking, as such person enjoined may incur or sustain by reason of the issuance of a temporary injunction, if it shall be finally decided that plaintiff was not entitled thereto.

Within five (5) days after the service of the temporary injunction, the defendant may except to the sufficiency of the sureties. If the defendant fails to do so he is deemed to have waived all objections to them.

When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) nor more than five (5) days, must justify before the judge, in the same manner as upon bail or arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed the order granting an injunction shall be dissolved.

(6) Injury and Damages. In any action under this act, it is not necessary to allege or prove actual damages or threat thereof, or actual injury or threat

thereof, to the plaintiff. But, in addition to injunctive relief, any plaintiff in any such action is entitled to recover the amount of the actual damages, if any, sustained by the plaintiff, as well as the actual damages, if any, sustained by any person who has assigned to the plaintiff his claim for damages resulting from a violation of this act.

History.
I.C., § 48-406, as added by 1955, ch. 95, § 4, p. 211; am. 2012, ch. 20, § 22, p. 66.

Compiler's Notes. The 2012 amendment, by ch. 20, deleted "or a probate judge" following "must justify before the judge" in the second undesignated paragraph following subsection (5).

The term "this act" refers to S.L. 1955, ch. 95, which is codified as §§ 48-403, 48-405, 48-406, and 48-408.

CHAPTER 5

REGISTRATION AND PROTECTION OF TRADEMARKS

SECTION.
48-504. Filing of applications.
48-506. Duration and renewal.
SECTION.
48-510. Classification.

48-504. Filing of applications. — (1) Upon the receipt of an application for registration and payment of the application fee, the secretary of state shall cause the application to be examined for conformity with this chapter.

(2) The applicant shall provide any additional pertinent information requested by the secretary of state including a description of a design mark and may make, or authorize the secretary of state to make, such amendments to the application as may be reasonably requested by the secretary of state or deemed by the applicant to be advisable to respond to any rejection or objection.

(3) The secretary of state may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter is distinctive of the applicant's or registrant's goods or services.

(4) Amendments may be made by the secretary of state upon the application submitted by the applicant upon the applicant's agreement, or the secretary of state may require a fresh application.

(5) If the applicant is found not to be entitled to registration, the secretary of state shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary of state in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until: (a) the secretary of state finally refuses registration of the mark; or (b) the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(6) If the secretary of state finally refuses registration of the mark, the applicant may appeal the denial of such registration to the district court in

and for Ada county. The court may compel registration of the mark, but without cost to the secretary of state, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(7) In the instance of applications concurrently being processed by the secretary of state which seek registration of the same or confusingly similar marks for the same or related goods or services, the secretary of state shall grant priority to the applications in order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of section 48-509, Idaho Code.

History.
I.C., § 48-504, as added by 1996, ch. 404, § 2, p. 1336; am. 2012, ch. 322, § 1, p. 881.
Compiler's Notes. The 2012 amendment, by ch. 322, in subsection (1), substituted "receipt" for "filing", "shall cause" for "may cause", and "this chapter" for "this act."

48-506. Duration and renewal. — (1) A registration of mark hereunder shall be effective for a term of ten (10) years from the date of registration and, upon application filed within six (6) months prior to the expiration of such term in a manner complying with the rules of the secretary of state, the registration may be renewed for a like term from the end of the expiring term.

(2) A renewal fee, payable to the secretary of state, shall accompany the application for renewal of the registration. When a renewal application includes goods or services which fall within multiple classes, the secretary of state may require payment of a fee for each class.

(3) A registration may be renewed for successive periods of ten (10) years in like manner and the secretary of state shall issue a certificate of renewal.

(4) Any registration in force on the date on which this act shall become effective shall continue in full force and effect for the unexpired term thereof and may be renewed by filing an application for renewal with the secretary of state in compliance with the rules of the secretary of state upon payment of the renewal fee within six (6) months prior to the expiration of the registration.

(5) All applications for renewal under this act, whether of registrations made under this act or of registrations effected under any prior act, shall include a statement that the mark has been and is still in use.

History.
I.C., § 48-506, as added by 1996, ch. 404, § 2, p. 1336; am. 2005, ch. 273, § 1, p. 841.
Compiler's Notes. "[O]n the date on which this act shall become effective", referenced in subsection (4), is July 1, 1996, the effective date of S.L. 1996, chapter 404.

48-510. Classification. — The secretary of state shall use the international classification of goods and services for convenience of administration of this act, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a

single application includes goods or services which fall within multiple classes, the secretary of state may require payment of a fee for each class. To the extent practicable, the classification of goods and services shall conform to the classification adopted by the United States patent and trademark office. Applications for renewal shall be filed using the international classification of goods and services. A renewed registration shall be issued by the secretary of state, under the international classification of goods and services, if such renewal would not expand the registrant's rights.

History.
I.C., § 48-510, as added by 1996, ch. 404, § 2, p. 1336; am. 2012, ch. 322, § 2, p. 881.

Compiler's Notes. The term "this act" refers to S.L. 1996, ch. 404, which is codified as §§ 48-501 to 48-518.

The 2012 amendment, by ch. 322, substituted "should conform" for "shall conform" in the third sentence, and rewrote the fourth and fifth sentences which formerly read: "Applications for renewal shall be filed using the classification of goods and services in effect when the trademark was approved by the secretary of state; provided that a registrant may request a renewed registration to be issued under the international classification of goods and services. When such a request is made, the secretary of state shall issue the renewed certificate as requested by the registrant if such renewal would not extend the registrant's rights."

48-512. Infringement.

Collateral References. Validity, construction, and application of state trademark counterfeiting statutes. 63 A.L.R. 6th 303.

Initial interest confusion doctrine under Lanham Trademark Act. 183 A.L.R. Fed. 553.

Application of doctrine of "reverse passing off" under Lanham Act. 194 A.L.R. Fed. 175.

Lanham Act trademark infringement actions in internet and website context. 197 A.L.R. Fed. 17.

CHAPTER 6

CONSUMER PROTECTION ACT

SECTION.
48-603F. Mortgage loan modification fees.
48-608. Loss from purchase or lease — Actual and punitive damages.

48-601. Short title and purpose.

ANALYSIS

Application.
Statutory damages.

Application.
Individuals selling real property for investment were subject to the Idaho consumer protection act, § 48-601 et seq., although they were not in the business of selling such property as owners or brokers where the real property was within the definition of "goods" in § 48-602(6), and its sale was "trade" or "commerce" under § 48-602(2). White v. Mock, 140 Idaho 882, 104 P.3d 356 (2004).

Statutory Damages.
In a property sale dispute, the trial court's failure to award statutory damages under § 48-608(1) for a violation of the Idaho consumer protection act, § 48-601 et seq., was error. White v. Mock, 140 Idaho 882, 104 P.3d 356 (2004).

Collateral References. Practices forbidden by state deceptive trade practice and consumer protection acts — Pyramid or Ponzi or Referral sales schemes. 48 A.L.R.6th 511.

48-602. Definitions.

Analysis

Misrepresentations.
Trade.

Misrepresentations.

In action by plaintiff who had purchased property from third party, against original owners, who had sold property to third party, claiming that fence lines' failure to match property described in deed was a material misrepresentation, the court found that there was no actionable misrepresentation under the Idaho consumer protection act (ICPA) because there was no difference between what purchaser received and the metes and bounds description in the contract. Fenn v. Noah, 142 Idaho 775, 133 P.3d 1240 (2006).

Trade.

Individuals selling real property for investment were subject to the Idaho consumer protection act, § 48-601 et seq., although they were not in the business of selling such property as owners or brokers where the real property was within the definition of "goods" in subsection (6), and its sale was "trade" or "commerce" under subsection (2). White v. Mock, 140 Idaho 882, 104 P.3d 356 (2004).

48-603. Unfair methods and practices.

Analysis

Misrepresentations.
Unconscionable conduct.

Misrepresentations.

In action by plaintiff who had purchased property from third party, against original owners, who had sold property to third party, claiming that fence lines' failure to match property described in deed was a material misrepresentation, the court found that there was no actionable misrepresentation under the Idaho consumer protection act (ICPA) because there was no difference between what purchaser received and the metes and bounds description in the contract. Fenn v. Noah, 142 Idaho 775, 133 P.3d 1240 (2006).

Because a creditor who sued his debtors' attorneys did not allege that he entered into a contractual relationship with the attorneys, he lacked standing under § 48-608(1); moreover, he failed to identify specific prohibited actions deemed to be unfair or deceptive, as set forth in §§ 48-603 to 48-603E. Taylor v. McNichols, 149 Idaho 826, 243 P.3d 642 (2010).

Unconscionable Conduct.

In a case of alleged price-fixing by manufacturers, the district court, after dismissing an unfair competition claim, did not err in denying the state's request to amend its complaint to allege a consumer protection claim; price-fixing of products that are not sold directly to consumers is not an unconscionable act within the meaning of this section, which addresses the prevention of outrageous transactions involving vulnerable consumers. State v. Daicel Chem. Indus., Ltd., 141 Idaho 102, 106 P.3d 428 (2005).

48-603C. Unconscionable methods, acts or practices.

Price Fixing.

In a case of alleged price-fixing by manufacturers, the district court, after dismissing an unfair competition claim, did not err in denying the state's request to amend its complaint to allege a consumer protection claim; price-fixing of products that are not sold directly to consumers is not an unconscionable act within the meaning of this section, which addresses the prevention of outrageous transactions involving vulnerable consumers. State v. Daicel Chem. Indus., Ltd., 141 Idaho 102, 106 P.3d 428 (2005).

48-603E. Unfair bulk electronic mail advertisement practices.

Collateral References. Validity, construction, and application of federal and state statutes regulating unsolicited e-mail or "spam". 10 A.L.R.6th 1.

48-603F. Mortgage loan modification fees. — (1) For purposes of this section, unless the context otherwise requires:

(a) "Fee" means any item of value including, but not limited to, goods or services.

(b) "Loan modification activities" is defined in section 26-31-201(3), Idaho Code.

(2) Charging or collecting any fee in connection with mortgage loan modification activities shall constitute a violation of the Idaho consumer protection act, unless the person charging or collecting such fees is licensed pursuant to chapter 20, title 54, Idaho Code, or licensed, exempt or excluded from licensing pursuant to part 2 or 3, chapter 31, title 26, Idaho Code.

History.
I.C., § 48-603F, as added by 2011, ch. 323, § 3, p. 939.

Compiler's Notes. Section 4 of S.L. 2011, ch. 323 provided: "This act shall be in full force and effect on and after September 1, 2011."

48-608. Loss from purchase or lease — Actual and punitive damages. — (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by this chapter, may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages or one thousand dollars ($1,000), whichever is the greater; provided, however, that in the case of a class action, the class may bring an action for actual damages or a total for the class that may not exceed one thousand dollars ($1,000), whichever is the greater. Any such person or class may also seek restitution, an order enjoining the use or employment of methods, acts or practices declared unlawful under this chapter and any other appropriate relief which the court in its discretion may deem just and necessary. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper in cases of repeated or flagrant violations.

(2) An elderly person or a disabled person who brings an action under subsection (1) of this section shall, in addition to the remedies available under subsection (1) of this section, recover from the offending party an enhanced penalty of fifteen thousand dollars ($15,000) or treble the actual damages, whichever is greater.

(a) In order to recover the enhanced penalty, the court must find that the offending party knew or should have known that his conduct was perpetrated against an elderly or disabled person and that his conduct caused one (1) of the following:

(i) Loss or encumbrance of the elderly or disabled person's primary residence;

(ii) Loss of more than twenty-five percent (25%) of the elderly or disabled person's principal monthly income;

(iii) Loss of more than twenty-five percent (25%) of the funds belonging to the elderly or disabled person set aside by the elderly or disabled person for retirement or for personal or family care or maintenance;

(iv) Loss of more than twenty-five percent (25%) of the monthly payments that the elderly or disabled person receives under a pension or retirement plan; or

(v) Loss of assets essential to the health or welfare of the elderly or disabled person.

(b) If the court orders restitution under subsection (1) of this section for a pecuniary or monetary loss suffered by an elderly or disabled person, the court shall require that the restitution be paid by the offending party before he pays the enhanced penalty imposed by this subsection.

(c) In this subsection:

(i) "Disabled person" means a person who has an impairment of a physical, mental or emotional nature that substantially limits at least one (1) major life activity.

(ii) "Elderly person" means a person who is at least sixty-two (62) years of age.

(iii) "Major life activity" means self-care, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks or being able to be gainfully employed.

(3) An action brought under subsection (1) of this section may be brought in the county in which the person against whom it is brought resides, has his principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

(4) Upon commencement of any action brought under this section, the clerk of the court shall, for informational purposes only, mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general.

(5) Costs shall be allowed to the prevailing party unless the court otherwise directs. In any action brought by a person under this section, the court shall award, in addition to the relief provided in this section, reasonable attorney's fees to the plaintiff if he prevails. The court in its discretion may award attorney's fees to a prevailing defendant if it finds that the plaintiff's action is spurious or brought for harassment purposes only.

(6) Any permanent injunction, judgment or order of the court made under section 48-606(1) through (3) or section 48-607, Idaho Code, shall be admissible as evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by this chapter.

History.

1971, ch. 181, § 9, p. 847; am. 1973, ch. 285, § 8, p. 601; am. 1990, ch. 273, § 6, p. 766; am. 2008, ch. 257, § 1, p. 749.

Compiler's Notes. The 2008 amendment, by ch. 257, in subsection (1), substituted "chapter" for "act"; and added subsection (2) and redesignated the remaining subsections accordingly.

Cited in: Posey v. Ford Motor Credit Co., 141 Idaho 477, 111 P.3d 162 (Ct. App. 2005).

ANALYSIS

Attorney's fees.
Choice of remedies.
Prevailing party.
—Attorney's fees.
Standing.

Attorney's Fees.

In an action brought by a musician to recover royalties on music, attorney's fees recoverable where a default judgment was entered were limited to the amount stated in a complaint. Holladay v. Lindsay, 143 Idaho 767, 152 P.3d 638 (Ct. App. 2006).

Attorney fees were properly awarded by the trial court under against a creditor who brought a frivolous suit against his debtors' attorneys, and fees on appeal also were warranted because the appeal was brought spuriously and without foundation for the pur-

pose of harassment. Taylor v. McNichols, 149 Idaho 826, 243 P.3d 642 (2010).

Choice of Remedies.

In an action to recover earnest money, where property seller alleged that the president of a real estate company violated the Idaho consumer protection act and, thus, terminated his employment contract with the real estate company, seller had chosen his remedy under subsection (1) of this section and can not later sue to recover actual damages. Knipe Land Co. v. Robertson, 151 Idaho 449, 259 P.3d 595 (2011).

Prevailing Party.

In a property sale dispute in which one ruling in favor of the sellers was overturned on appeal, while several other rulings in favor of the sellers were affirmed, the buyer was not entitled to attorney fees on appeal because he was not the prevailing party. White v. Mock, 140 Idaho 882, 104 P.3d 356 (2004).

Dealership was not entitled to attorney's fees where it did not prevail on appeal. Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc., 142 Idaho 235, 127 P.3d 138 (2005).

—Attorney's Fees.

In denying attorney fees to both parties, the trial court did not venture outside the boundaries of its discretion, nor did it act inconsistently with the legal standards applicable to the award of attorney fees; the trial court's decision to require each party to bear its own fees appeared to have been reached through the exercise of reason. Israel v. Leachman, 139 Idaho 24, 72 P.3d 864 (2003).

Standing.

Because a creditor who sued his debtors' attorneys did not allege that he entered into a contractual relationship with the attorneys, he lacked standing under this section; moreover, he failed to identify specific prohibited actions deemed to be unfair or deceptive, as set forth in §§ 48-603 to 48-603E. Taylor v. McNichols, 149 Idaho 826, 243 P.3d 642 (2010).

48-610. Voluntary compliance — District court approval.

Arbitration.

Supreme court of Idaho had jurisdiction to hear an appeal from an order dismissing a case alleging violations of the Idaho consumer protection act, § 48-610 et seq., on the grounds that the parties had entered into a contract that included a provision requiring them to arbitrate disputes between them; although the order dismissed the case, it had the effect of compelling arbitration. Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc., 142 Idaho 235, 127 P.3d 138 (2005).

48-619. Limitation of action.

Accrual.

To determine whether debtors have a timely Disclosure Statement ICPA claim, the Court must first determine when their alleged cause of action "accrued." In Idaho, a cause of action accrues when one party may sue another. Before an "accrued" claim arises under the ICPA, a person must purchase or lease goods or services, and thereby suffer an ascertainable loss. In addition, the ascertainable loss must be the result of a practice declared unlawful by the ICPA. Beach v. Bank of Am. (In re Beach), 447 B.R. 313 (Bankr. D. Idaho 2011).

CHAPTER 7

SHOPLIFTING

SECTION.

48-702. Liability for acts of minors.

48-702. Liability for acts of minors. — The parent having legal custody, of a minor who knowingly removes merchandise from a merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars ($100) nor more than two hundred fifty dollars ($250), costs of suit and reasonable attorney's fees. Recovery under

this section is not limited by any other provision of law which limits the liability of a parent for the tortious conduct of a minor. The liability of parents and of the minor under this chapter is joint and several.

A parent not having legal custody of a minor shall not be liable for the conduct of the minor proscribed by this act.

History.

I.C., § 48-702, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 2, p. 562; am. 2012, ch. 257, § 12, p. 709.

Compiler's Notes. The term "this act" refers to S.L. 1974, ch. 245, which is codified as §§ 48-701 to 48-705.

The 2012 amendment, by ch. 257, deleted "or legal guardian" or "or guardian" following "parent" or "parents" in four places.

CHAPTER 8

IDAHO TRADE SECRETS ACT

48-801. Definitions.

Analysis

Misappropriation.
Trade secret.

Misappropriation.

Plaintiff demonstrated a likelihood of success on the merits of its Idaho trade secrets act misappropriation claim; however, the injunction was limited to the sale of machines that matched those designed for and purchased by plaintiff or any machine or any other disclosure that would reveal the trade secrets of plaintiff. Scentsy, Inc. v. Performance Mfg., 2009 U.S. Dist. LEXIS 9171 (D. Idaho Feb. 9, 2009).

Because defendant had possession of computer programming source code through his work for plaintiff company (and created much of it), he acquired the code under circumstances giving rise to a duty to maintain its secrecy or limit its use; thus, if defendant used or disclosed the trade secret, he was liable for misappropriation. Justmed, Inc. v. Byce, 600 F.3d 1118 (9th Cir. 2010).

Court reversed and remanded the judgment in favor of plaintiff company on the company's misappropriation claim because, besides filing for a copyright and threatening to withhold the source code, defendant made no other "use" of the source code. While defendant threatened misappropriation, his actions did not rise to the level of misappropriation. Justmed, Inc. v. Byce, 600 F.3d 1118 (9th Cir. 2010).

Trade Secret.

Six factors that can be used to show that given information is a trade secret: (1) the extent to which the information is known outside the plaintiff's business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Wesco Autobody Supply v. Ernest, 149 Idaho 881, 243 P.3d 1069 (2010).

In an action against former employees, who resigned and went to work for a competitor, customer lists, lists showing customer buying preferences, the history of customer purchases, and custom paint formulas are trade secrets. Wesco Autobody Supply v. Ernest, 149 Idaho 881, 243 P.3d 1069 (2010).

48-802. Injunctive relief.

Limited Injunction.

Plaintiff demonstrated a likelihood of success on the merits of its Idaho trade secrets act claim; however, the injunction was limited to the sale of machines that matched those designed for and purchased by plaintiff or any machine or any other disclosure that would reveal the trade secrets of plaintiff. Scentsy, Inc. v. Performance Mfg., 2009 U.S. Dist. LEXIS 9171 (D. Idaho Feb. 9, 2009).

Actual or threatened misappropriation may be enjoined; therefore, while damages for misappropriation of a trade secret were inappropriate because of the lack of "use" or "disclosure," as contemplated in the context of trade secret protection, the district court could grant an injunction against defendant's threatened use or disclosure of the source code if appropriate. Justmed, Inc. v. Byce, 600 F.3d 1118 (9th Cir. 2010).

Collateral References. Applicability of inevitable disclosure doctrine barring employment of competitor's former employee. 36 A.L.R.6th 537.

48-803. Damages.

Collateral References. Applicability of inevitable disclosure doctrine barring employment of competitor's former employee. 36 A.L.R.6th 537.

CHAPTER 10

IDAHO TELEPHONE SOLICITATION ACT

SECTION.
48-1002. Definitions.
48-1003A. No telephone solicitation contact list.
48-1003B. Consent required for telemarketing charges to previously obtained accounts.
48-1003C. Automatic dialing-announcing device.

48-1002. Definitions. — In this chapter:

(1) "Business days" means all days of the week except Saturdays and Sundays and all other legal holidays as defined in section 73-108, Idaho Code.

(2) "Conducting business" means making telephone solicitations either to or from locations within the state of Idaho.

(3) "Established business relationship" means a relationship that:

(a) Was formed, prior to a telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement, or commercial transaction between the parties regarding products or services offered by such seller or telephone solicitor;

(b) Has not been previously terminated by either party; and

(c) Currently exists or has existed within the immediately preceding eighteen (18) months.

(4) "Goods" means any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value.

(5) "Minor" means any person less than eighteen (18) years of age.

(6) "Newspaper of general circulation" means a newspaper which holds a second class mailing permit from the United States postal service, has at least two hundred (200) subscribers, is made up of at least four (4) pages of at least five (5) columns, is not produced through any type of mimeographing process, and has been published or distributed within the state of Idaho on a weekly basis for at least seventy-eight (78) consecutive weeks, or on a daily basis, which is defined to be no less than five (5) days of any one (1) week, at least twelve (12) months immediately preceding any telephone solicitation done by or on behalf of such newspaper.

(7) "Person" means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

(8) "Purchaser" means a person who is solicited to become or does become obligated to a telephone solicitor.

(9) "Services" means any work, labor, help, assistance or instruction wherever provided or performed.

(10) "Telephone directory of general circulation" means a directory containing telephone numbers of individual residents and/or businesses which is published on a community-wide or regional basis and which is widely available to persons residing in such community or region through free distribution or direct purchase of said directory without the requirement of other purchases or affiliations.

(11) "Telephone solicitation" means:

(a) Any unsolicited telephone call to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services during the course of a telephone call; or

(b) Any communication in which:

(i) A free gift, award, or prize is offered, or in which it is represented or implied that goods or services are offered below the regular price of the goods or services; and

(ii) A return telephone call is invited or the communication is followed up by a call to the purchaser by the telephone solicitor; and

(iii) It is intended during the course of the return or follow-up call with the purchaser that an agreement to purchase, or a purchase be made.

(c) For purposes of this subsection, "communication" means a written or oral statement or notification or advertisement transmitted to the purchaser through any means.

(12) "Telephone solicitor" means any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing device, engages in a telephone solicitation.

(13) "Unsolicited advertisement" means any advertisement offering goods or services which is transmitted to any person without that person's prior express invitation or permission unless an established business relationship exists between the sender and recipient which has not been terminated by either party.

(14) "Written confirmation" means a writing that includes the following information: the date of purchase, the telephone solicitor's complete address and registration number, a listing of all goods and/or services purchased, a listing of the price of each good and/or service purchased, the total obligation incurred by the purchaser, and the notice of cancellation as set forth in subsection (2) of section 48-1004, Idaho Code.

History.
I.C., § 48-1002, as added by 1992, ch. 27, § 1, p. 83; am. 1998, ch. 331, § 1, p. 1064; am. 2000, ch. 452, § 2, p. 1422; am. 2004, ch. 102, § 1, p. 358.

Compiler's Notes. Section 2 of S.L. 2004, ch. 102 is compiled as § 48-1003A.

48-1003A. No telephone solicitation contact list. — (1)(a) Any Idaho residential, mobile or telephonic paging device telephone subscriber

desiring to be placed on the Idaho "no telephone solicitation contact" list, indicating that the subscriber does not wish to receive telephone solicitations, may be placed upon such list through a procedure approved by the attorney general.

(b) Notwithstanding any other provision of this chapter, a national "do-not-call" registry established and maintained by the federal trade commission, pursuant to 16 CFR 310.4(b)(1)(iii)(B), may serve as the Idaho "no telephone solicitation contact" list provided by this chapter. The attorney general may provide to the federal trade commission, for inclusion in the national "do-not-call" registry, the telephone numbers of Idaho residents that are on the Idaho "no telephone solicitation contact" list.

(2) It is a violation of this chapter for a telephone solicitor to make or cause to be made any telephone solicitation, as defined by section 48-1002(11)(a), Idaho Code, to any telephone number which is assigned by a telephone company to an Idaho resident listed on the Idaho "no telephone solicitation contact" list when that telephone number has been on such list for at least three (3) months prior to the date the telephone solicitation is made.

(3) Section 48-1006, Idaho Code, notwithstanding, any violation of this section shall subject the person violating the terms of this section to a civil penalty, to be imposed by the district court, as follows: for the first violation, not to exceed five hundred dollars ($500); for the second violation, not to exceed two thousand five hundred dollars ($2,500); for the third and subsequent violations, not to exceed five thousand dollars ($5,000) per violation. Penalties received under this section shall be expended pursuant to legislative appropriation.

(4) This section is not applicable to telephone solicitations:

(a) To a telephone subscriber's commercial or business telephone number;

(b)(i) Where an established business relationship exists, as defined in subsection (3) of section 48-1002, Idaho Code, between the telephone solicitor and the telephone subscriber; provided however, the established and existing business relationship exception shall not apply between a telephone company and a telephone subscriber under this section unless the telephone subscriber shall have previously consented to receive a telephone solicitation from such company or its agent;

(ii) For purposes of this section, "telephone company" means a person providing telecommunications services to the public, or any segment thereof, for compensation, by wire, cable, radio, lightwaves, cellular signal or other means. "Telecommunications services" means the conveyance of voice, data, sign, signal, writing, sound, messages or other information at any frequency over any part of the electromagnetic spectrum;

(c) By a minor seeking to sell a good or service, pursuant to a telephone solicitation, for a charitable purpose or organization.

(5) The attorney general shall advise telephone subscribers who register with his office under this section of all self-help measures available to them to reduce unwanted telephone solicitations.

History.
I.C., § 48-1003A, as added by 2000, ch. 452, § 3, p. 1422; am. 2004, ch. 102, § 2, p. 358.

Compiler's Notes. Section 1 of S.L. 2004, ch. 102 is compiled as § 48-1002.

48-1003B. Consent required for telemarketing charges to previously obtained accounts. — (1) As used in this section:

(a) "Account" means a credit card, debit card, checking account, savings account, loan account, telephone service account, utility account or other similar account.

(b) "Account holder" means a consumer who owns an account, or a consumer who has authority to cause a charge or debit to an account.

(c) "Authorization" means an account holder providing express consent to a telemarketer or person acting on behalf of the telemarketer, to charge or cause to be charged the account holder's account for the purchase of goods or services. Authorization is not effective until the account holder has been advised, clearly and conspicuously:

(i) That the telemarketer has the account holder's account number;

(ii) That the telemarketer is going to charge the account holder's account;

(iii) The specific account that will be charged;

(iv) The specific amount that the account holder's account will be charged; and

(v) The name, address and telephone number of the person who will be charging the account holder's account.

(d) "Charge" means a charge or debit, or an attempt to charge or debit, an account, if that account can be charged without the express written authorization of the account holder to each specific charge or debit. Charge does not include a charge or debit, or an attempt to charge or debit, a telephone service account for local or long distance telecommunications services. A charge can occur by electronic or any other means.

(e) "Goods" or "services" has the meaning given to them in section 48-1002(4) and (9), Idaho Code, except that for purposes of this section these terms are limited to goods or services which are normally used for personal, household or family purposes.

(f) "Previously obtained account number telemarketing call" means a telephone call in which the telemarketer attempts to obtain account holder authorization for a current or future charge without obtaining the account number from the account holder during the call; provided however, that "previously obtained account number telemarketing call" does not include the sale of securities through a telephone call, if the telemarketer is a licensed securities agent or broker in the state of Idaho; provided further, that "previously obtained account number telemarketing call" does not include a telephone call initiated by an account holder during which the person receiving the telephone call attempts to sell, offer for sale, or otherwise induce the account holder to purchase goods or services. A "previously obtained account number telemarketing call" does not include a call to or from a current customer of the telemarketer to renew or extend, inquire about or add goods or services if the customer has previously provided account information for billing purposes to the

telemarketer and the telemarketer clearly and conspicuously discloses that such renewal or extension, or additional goods or services, will be debited to the same account.

(g) "Telemarketer" means any person who regularly engages in a previously obtained account number telemarketing call.

(2) A telemarketer shall not charge or cause a charge to an account holder's account as a result of a previously obtained account number telemarketing call unless the telemarketer has first obtained authorization from the account holder for the specific charge discussed during the call.

(3) An account holder's authorization can be in writing or given verbally. If the telemarketer uses written authorization, the telemarketer cannot charge the account holder's account until the account holder's written authorization is received by the telemarketer. If the telemarketer uses verbal authorization, either (i) the authorization must be audio taped by the telemarketer and the telemarketer must advise the account holder that his or her authorization is being recorded or (ii) the account holder must disclose the last four (4) digits of the account holder's account number if the telemarketer has reasonable procedures in effect to verify that such digits as provided by the account holder match the last four digits of the account to be charged. Authorizations must be kept and maintained for a period of two (2) years and must also be made available to the account holder upon written request.

(4)(a) In the case where a telemarketer utilizes a voice response unit, whether inbound or outbound, an account holder may give authorization by providing the last four (4) digits of the account holder's account number, an account number previously assigned to the account holder by the telemarketer, or an alternate unique identifier which enables the telemarketer to verify or confirm the account holder's authorization; provided however, that the information set forth in subsection (1)(c) of this section must first be clearly and conspicuously disclosed to the account holder.

(b) For purposes of this subsection, "voice response unit" means a device which allows a user to provide or obtain information from a computer system using touch-tone input or speech input.

History.
I.C., § 48-1003B, as added by 2001, ch. 315, § 1, p. 1123; am. 2004, ch. 102, § 3, p. 358.

48-1003C. Automatic dialing-announcing device. — (1) When a person intends to utilize an automatic dialing-announcing device to send a message by using or connecting to a telephone line, the person must, at the outset of the message, disclose the following:

(a) The name of the person for whom the message is being made;

(b) The purpose of the message; and

(c) The contact information of the caller.

(2) As used in this section:

(a) "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction

with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

(b) "Caller" means a person who contacts, or attempts to contact, a subscriber in this state by using an automatic dialing-announcing device.

(c) "Subscriber" means a person who has subscribed to telephone service from a telephone company, or other persons living or residing with the subscribing person.

History.

I.C., § 48-1003C, as added by 2007, ch. 203, § 1, p. 627.